

No. 82-914

Office-Supreme Court, U.S.

FILED

MAY 13 1983

ALEXANDER L. STEVAS,  
CLERK

*In The*

**Supreme Court of the United States**

October Term, 1982

**MONSANTO COMPANY,**

*Petitioner,*

vs.

**SPRAY-RITE SERVICE CORPORATION,**

*Respondent.*

On Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit

**JOINT APPENDIX**

FRED H. BARTLIT, JR.  
*(Counsel of Record for Petitioner)*  
JEFFREY J. KENNEDY  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

MICHAEL T. HANNAFAN  
HANNAFAN & HANDLER, LTD.  
Suite 1880  
Three First National Plaza  
Chicago, Illinois 60602  
(312) 782-7490  
*(Counsel for Petitioner)*

RICHARD W. DUESENBERG  
WILLIAM F. ROGERS  
MONSANTO COMPANY  
800 N. Lindberg Blvd.  
St. Louis, Missouri 63166  
*(Counsel for Petitioner)*

Dated: May 14, 1983

EARL A. JINKINSON  
*(Counsel of Record for Respondent)*  
ROBERT G. FOSTER  
WINSTON & STRAWN  
Suite 5000  
One First National Plaza  
Chicago, Illinois 60603  
(312) 558-5600

CHAS. F. YOUNG CHICAGO, INC.

**PETITION FOR CERTIORARI FILED DECEMBER 7, 1982.  
CERTIORARI GRANTED FEBRUARY 28, 1983.**

No. 82-914

---

*In The*  
**Supreme Court of the United States**  
October Term, 1982

---

**MONSANTO COMPANY,**

*Petitioner,*

**vs.**

**SPRAY-RITE SERVICE CORPORATION,**

*Respondent.*

---

On Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit

---

**JOINT APPENDIX**

---

## INDEX

	PAGE
Chronological List of Relevant Docket Entries in the Courts Below .....	A-1
Amended Complaint, filed December 4, 1975 ....	A-3
Answer of Monsanto Company to the Amended Complaint, filed January 27, 1976 .....	A-13
Excerpts from District Court's Jury Instructions, February 20, 1980 .....	A-18
Jury's Answers to Special Interrogatories, February 21, 1980 .....	A-27
Trial Exhibits	
PX 19 .....	A-29
PX 20 .....	A-31
PX 42 .....	A-35
PX 134, pp. 4, 26-27 .....	A-38
PX 136, pp. 3, 15-17 .....	A-42
PX 137, pp. 3-4, 7-8 .....	A-46
PX 139, pp. 1, 4, 28-31, 33, 41, & 44 .....	A-50
PX 196 .....	A-59
PX 202, pp. 1-3 .....	A-62
PX 233 .....	A-65
PX 279 .....	A-70
PX 309 .....	A-73
PX 325 .....	A-76
PX 344 .....	A-78
PX 348, pp. 1, 3-4, 5-9 .....	A-79
DX 38, pp. 1-8 .....	A-88
DX 190, pp. 1 & 5 .....	A-95
DX 272 .....	A-98
DX 465 .....	A-100
DX 466 .....	A-102
DX 467a .....	A-109
DX 467b .....	A-110

	PAGE
DX 467c.....	A-111
DX 500 .....	A-112
DX 501 .....	A-113
DX 502 .....	A-114
DX 503 .....	A-115

NOTE: The appendix filed in support of the petition for certiorari contains the following materials, which are omitted from this Joint Appendix:

- App. A: Seventh Circuit Opinion, June 28, 1982.
- App. B: Seventh Circuit Order affirming judgment against Monsanto Company, June 28, 1982.
- App. C: District Court Judgment, February 22, 1980.
- App. D: Transcript of District Court denial of Monsanto's motion for directed verdict at the close of testimony, February 19, 1980.
- App. E: Seventh Circuit Order denying petition for rehearing and suggestion for rehearing *en banc*, September 8, 1982.



CHRONOLOGICAL LIST OF RELEVANT DOCKET  
ENTRIES IN COURTS BELOW

- February 24, 1972—Original Complaint filed.
- May 12, 1972—Answer of Monsanto Company to the Complaint.
- December 4, 1975—Amended Complaint filed.
- January 27, 1976—Answer of Monsanto Company to the Amended Complaint.
- January 7, 1980—Final Pretrial Order entered.
- February 21, 1980—Minute Order: Jury finds for the plaintiff. District Court enters judgment in favor of the plaintiff on the jury's verdict.
- February 22, 1980—Judgment on Jury Verdict.
- March 3, 1980—Monsanto Company's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial, and to set Briefing Schedule.
- March 28, 1980—Amended Judgment on Jury Verdict.
- July 15, 1980—District Court Order denying Monsanto Company's Motion for New Trial.
- August 7, 1980—Monsanto Company's Notice of Appeal.
- December 5, 1980—Brief for Defendant-Appellant Monsanto Company and Appendix.
- March 16, 1981—Brief for Plaintiff-Appellant-Cross-Appellant Spray-Rite Service Corporation.
- April 22, 1981—Reply Brief for Defendant-Appellant-Cross-Appellee Monsanto Company.
- June 28, 1982—Seventh Circuit's Opinion.
- July 12, 1982—Petition of Defendant-Appellant Monsanto Company for Rehearing with Suggestion that Rehearing be *en banc*.

August 3, 1982—Answer of Plaintiff-Appellee Spray-Rite to Defendant-Appellant Monsanto Company's Petition for Rehearing.

August 5, 1982—Reply of Petitioner Monsanto Company to Answer of Spray-Rite Regarding Petition for Rehearing *en banc*.

September 8, 1982—Seventh Circuit Order denying Monsanto Company's Petition for rehearing and suggestion for rehearing *en banc*.

A-3

*In The*

# **United States District Court**

*For The*

*Northern District of Illinois,*

*Western Division*

---

---

**SPRAY-RITE SERVICE CORPORATION,**  
an Iowa corporation,

*Plaintiff,*

vs.

**MONSANTO COMPANY,**  
a Delaware corporation,

*Defendant.*

NO. 72 C 12

JURY DEMANDED

---

---

## **AMENDED COMPLAINT**

Plaintiff, Spray-Rite Service Corporation ("Spray-Rite") by its attorneys, complains of defendant, Monsanto Company ("Monsanto") as follows:

### **COUNT I**

#### **JURISDICTION AND VENUE**

1. This action arises under the antitrust laws of the United States, more particularly Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Sections 2, 4 and 16 of the Clayton Antitrust Act as amended by the Robinson-Patman Act (15 U.S.C. §§ 13, 15 and 26). Plaintiff brings this action to recover damages.

2. Monsanto transacts business and is found within the Northern District of Illinois and has during the period of the violations alleged herein transacted business and was found within the Northern District of Illinois. Many of the unlawful acts alleged herein or done pursuant to the combination and conspiracy alleged herein, have been performed

within the Northern District of Illinois, and the commerce described hereinafter is carried on in part within this District.

#### PARTIES

3. Plaintiff, Spray-Rite, is an Iowa corporation, having its principal place of business in the State of Illinois. Spray-Rite sold agricultural pesticides, primarily in the Corn Belt of the United States until approximately 1972, when, because of the unlawful acts alleged herein, Spray-Rite was forced to terminate its business.

4. Defendant, Monsanto, is a Delaware corporation, having its principal place of business in the State of Missouri. Monsanto manufactures and sells a widely diversified line of chemical products to many different industries throughout the United States and the world. It operates over 60 domestic plants and research facilities, and many foreign facilities. During 1974, Monsanto enjoyed sales of about \$3.50 billion. Monsanto markets its chemical products through product groups, one group of which deals in chemical products for agriculture, including agricultural pesticides. The agricultural chemical products group accounted for 8.4%, 8.9%, 10.0% and 11.7% of all sales by Monsanto and its subsidiaries in calendar years 1968, 1969, 1970 and 1974, respectively. Monsanto is one of the largest manufacturers of pesticides in the United States. Spray-Rite had a contract with Monsanto to distribute certain of Monsanto's pesticides in the Corn Belt until the events of 1968 as hereinafter described.

#### DEFINITIONS

5. As used in this complaint, "pesticides" means chemicals and chemical compounds used in agriculture to destroy or control one or more types of harmful plants, insects or fungi; "herbicides" means a pesticide used to destroy or control harmful plants; "Corn Belt" means the upper and

central midwestern United States; "contract distributor" means a distributor who has entered into a contract with Monsanto to distribute its pesticides and "co-conspirators" means Monsanto's subsidiaries and agents, all contract distributors of Monsanto pesticides on and after 1968, including but not limited to Associated Producers, Inc., Brayton Chemical Co., Hopkins Agricultural Chemical Co., Lavery Sprayers, Inc., Mid-State Chemical Co., Midwest Agricultural Warehouse Co. and Van Diest Supply Co. and dealers of Monsanto pesticides in the Corn Belt and throughout the United States.

#### TRADE AND COMMERCE

6. The pesticides which are the subject of this complaint move regularly in interstate commerce. The unlawful acts and practices alleged in this complaint operate directly on such products in connection with their manufacture, sale and interstate shipment and thereby directly restrain and adversely affect interstate commerce.

7. Monsanto conducts its business in interstate commerce and the unlawful acts and practices complained of herein occurred in the flow of such commerce.

8. Spray-Rite has sold pesticides in the Corn Belt since 1956. From its inception, Spray-Rite has been a pioneer and innovator in the application of pesticides as that technology has developed since World War II, and was instrumental in improving the sales distribution of pesticides in the Corn Belt. Spray-Rite continued thereafter to offer superior technical and marketing services to its customers by concentrating on and specializing in the distribution of pesticides. Spray-Rite has sought to sell to customers in large lots, early in the season and on a cash basis whenever possible. Consequently, Spray-Rite has had a negligible bad debt experience. For these reasons and because of its otherwise efficient methods of operation, Spray-Rite had been able to operate successfully by offering competitive prices to its customers.

9. Since about 1957 and continuing until October 28, 1968, Spray-Rite was a contract distributor of Monsanto herbicides. From time to time during that period, Monsanto and Spray-Rite executed agreements entitled Formulated Pesticide Products Distributor Agreements, but Spray-Rite's distributorship and course of dealing with Monsanto was continuous during that period of time regardless of the existence, or lack of existence, of such executed Agreements. While a Monsanto contract distributor, Spray-Rite promptly paid its invoices to Monsanto, participated in Monsanto advertising and promotional programs and otherwise performed satisfactorily as a distributor of Monsanto herbicides in all lawful and material respects. During the years 1966, 1967 and 1968, Spray-Rite purchased approximately \$312,231.00, \$642,498.00 and \$496,875.00, respectively, of Monsanto herbicides from Monsanto. By 1967, Spray-Rite was one of Monsanto's largest volume distributors of Monsanto herbicides in the Corn Belt. Spray-Rite anticipated substantial increases during future years in its purchases of Monsanto herbicides because the demand for such herbicides in the Corn Belt was expanding rapidly and substantially, in part due to the efforts of Spray-Rite. In reliance on continuing and growing as a Monsanto distributor, Spray-Rite invested substantial capital and labor in its business. As a result, Spray-Rite has the modern warehouse capacity to carry substantial pesticide inventories and has vehicles suitable for efficient delivery of such pesticides. Spray-Rite also developed, at great expense, valuable and unique lists of pesticide customers and potential customers for its growing business.

10. An additional factor contributing to Spray-Rite's record of growth was its ability to hold itself out to its customers and potential customers as carrying a "full line" of pesticides for application in the Corn Belt. It has been the practice in the Corn Belt for distributors of pesticides to carry such a "full line" because purchasers of pesticides usually purchase all their requirements from a single source of supply. In 1968 and in other years, it was essential for a



full line pesticide distributor in the Corn Belt to carry the popular patented pesticides manufactured by Monsanto and by Ciba-Geigy Corporation (formerly Geigy Corp.). Such pesticides included Randox, Ramrod and Lasso manufactured by Monsanto, and Atrazine (Aatrax) and Diazinon manufactured by Ciba-Geigy Corporation. Spray-Rite was a distributor of such Monsanto and Ciba-Geigy Corporation pesticides in 1968. A distributor of pesticides in the Corn Belt who did not carry all or substantially all such pesticides (or their currently popular equivalents) was and is at a competitive disadvantage with other distributors who do, because of the aforescribed practice of pesticide purchasers to purchase from a single source of supply.

#### THE VIOLATIONS

11. Beginning in or about 1967 and continuing to the present time, Monsanto and the co-conspirators have combined, conspired and agreed with one another to eliminate and have eliminated Spray-Rite as a competitor in the sale of Monsanto herbicides and other pesticides in the Corn Belt and to restrain trade in the sale of Monsanto herbicides and other pesticides in the Corn Belt. Such combinations, conspiracies and agreements include the following unlawful acts and practices:

a. Monsanto and the co-conspirators have determined, fixed and maintained prices at which distributors of Monsanto herbicides may resell such herbicides;

b. Monsanto and the co-conspirators have restricted the territory in which distributors of Monsanto herbicides may resell such herbicides;

c. Monsanto and the co-conspirators have restricted the type of customer to whom distributors of Monsanto herbicides may resell such herbicides;

d. Monsanto, in combination, conspiracy and agreement with its co-conspirators, terminated Spray-Rite



and other contract distributors of Monsanto herbicides to punish and coerce distributors to comply with Monsanto and its co-conspirators' policies and practices of fixing and maintaining prices and restricting territory and types of customers;

e. Monsanto and the co-conspirators have reported among themselves the names of distributors who have failed to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers in order to coerce compliance with such policies;

f. Monsanto and the co-conspirators have manipulated the price and terms of sale of Monsanto herbicides and the availability of Monsanto herbicides to Monsanto distributors in order to punish and coerce distributors to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

g. Monsanto and the co-conspirators boycotted Spray-Rite in order to eliminate Spray-Rite as a competitor and to coerce distributors of Monsanto herbicides to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

h. Monsanto and the co-conspirators have invoked and enforced a restrictive herbicide shipping program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

i. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor and dealer compensation program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

j. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor early take program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

k. In the mid 1960's through and including 1969, Monsanto established approximately 155 Monsanto Agricultural Centers ("MAC centers") most of which were located in the Corn Belt. The MAC centers were, for the most part, Monsanto-owned sales outlets which offered and sold Monsanto pesticides and other agricultural products to customers and potential customers of Spray-Rite. The MAC centers offered and sold to such customers and potential customers, Monsanto herbicides in combination with other agricultural products at "package" prices and at generally lower prices than distributors of Monsanto herbicides were offering. Monsanto, through its MAC centers, sold Monsanto herbicides to customers and potential customers of Spray-Rite at prices lower than the prices at which Monsanto sold Monsanto herbicides of like grade and quality to Spray-Rite. Monsanto utilized the sales of herbicides through its MAC centers to destroy the business of Spray-Rite.

l. Monsanto has sold and continues to sell herbicides of like grade and quality at discriminatory prices and in connection with discriminations in services and facilities, by means of devices, acts and practices such as indirect price and service concessions, commissions, rebates and advertising and other allowances.

#### EFFECTS OF VIOLATIONS

12. The aforesaid unlawful acts and practices have caused, among other things, the following unlawful effects:

a. The resale prices of Monsanto herbicides have been fixed and maintained at arbitrary and non-competitive levels;

b. The territory in which distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

c. The type of customer to whom distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

d. The number of distributors of Monsanto herbicides and other pesticides has been reduced with the result that competition in the sale of Monsanto herbicides and other pesticides in the Corn Belt has been restricted;

e. The price at which Spray-Rite could purchase Monsanto herbicides, after being terminated by Monsanto as a contract distributor, has been fixed and maintained at arbitrary and non-competitive levels;

f. The supply of Monsanto herbicides available to Spray-Rite has been restricted;

g. Distributors of Monsanto herbicides and other pesticides in the Corn Belt have been coerced into complying with the policies of Monsanto and its co-conspirators of fixing and maintaining prices, restricting territories and types of customers through policing, boycotting, terminating non-complying contract distributors, selectively compensating distributors, selectively shipping herbicides and manipulating the terms of sale and the supply of Monsanto herbicides;

h. Purchasers of Monsanto herbicides and other pesticides have been substantially hindered from choosing other distributors and from purchasing at competitive prices.

i. Spray-Rite has been eliminated as a competitor in the sale of Monsanto herbicides and other pesticides. It has experienced net operating losses of \$37,067.00, \$11,513.00, \$61,763.00 and \$65,469.00, respectively, in 1969, 1970, 1971 and 1972, its volume of business and its

potential for acquiring new business was damaged and ultimately its business was destroyed.

13. As a direct and proximate result of the unlawful combinations, conspiracies, agreements, acts and practices alleged against Monsanto and the co-conspirators herein, Spray-Rite has been irreparably injured in its business and property and its business and property have been destroyed. Spray-Rite is entitled to have judgment against Monsanto in treble the amount of its damages which are at least \$1,825,000.00.

14. The foregoing combinations, conspiracies and agreements and the acts and practices pursuant thereto of Monsanto and the co-conspirators were and are in restraint of trade or commerce among the several states in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

## COUNT II

1-14 Paragraphs 1-14 of Count 1 are realleged as paragraphs 1-14 of Count II.

15. The foregoing acts and practices of Monsanto alleged in subparagraphs 11(k) and 11(l) are in violation of Section 2(a), (c), (d) and (e) of the Robinson-Patman Act (15 U.S.C. § 13(a), (c), (d) and (e)).

## RELIEF REQUESTED

WHEREFORE, plaintiff, Spray-Rite prays:

1. That this Court adjudge and decree that the combinations, conspiracies, agreements, acts and practices charged against Monsanto herein were and are in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Section 2(a), (c), (d) and (e) of the Clayton Act (15 U.S.C. § 13(a), (c), (d) and (e)).

2. That this Court enter judgment in favor of Spray-Rite against Monsanto in the amount of at least \$5,475,000.00.

3. That Spray-Rite recover from Monsanto its costs in this suit including its reasonable attorneys' fees incurred herein, as provided by Section 4 of the Clayton Act (15 U.S.C. § 15).

4. That Spray-Rite have such other additional and different relief as the nature of the case may require or as the Court shall deem just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

/s/ RICHARD F. VITKUS

---

Richard F. Vitkus

One First National Plaza  
Suite 5000  
Chicago, Illinois 60603  
(312) 786-5600

*Attorney for Plaintiff*

OF COUNSEL:  
WINSTON & STRAWN  
One First National Plaza  
Suite 5000  
Chicago, Illinois 60603  
(312) 786-5600

[Certificate of service omitted in printing.]

*In The*

# **United States District Court**

*For The*

*Northern District of Illinois,*

*Western Division*

---

---

**SPRAY-RITE SERVICE CORPORATION,**  
an Iowa Corporation,

*Plaintiff,*

**vs.**

**MONSANTO COMPANY,**  
a Delaware corporation,

*Defendant.*

**NO. 72 C 12**

---

---

## **ANSWER TO AMENDED COMPLAINT**

Defendant, MONSANTO COMPANY, by its attorneys,  
for its answer to the Amended Complaint:

### **COUNT I**

1. Denies the allegations in paragraph 1, except admits that plaintiff purports to bring this action for damages under the antitrust laws of the United States.

2. Admits that it is found or transacts business within the Northern District of Illinois and denies the remaining allegations of paragraph 2.

3. Denies knowledge or information sufficient to form a belief as to the allegations of the first sentence; admits Spray-Rite has sold agricultural pesticides in the Corn Belt and denies the remaining allegations of the second sentence.

4. Denies the allegations of the last sentence in paragraph 4, specifically including any legal conclusion with regard to the contractual relationship between Spray-Rite and Monsanto, except that it admits Spray-Rite was at one

time a distributor of certain Monsanto Company pesticides in a portion of the Corn Belt and was not reappointed as a distributor in 1968; admits the remaining allegations contained in paragraph 4.

5. Admits the complaint purports to use the definitions set forth in paragraph 5 and denies the remaining allegations in paragraph 5, specifically including the inference that there exist any "co-conspirators."

6. Denies the allegations of paragraph 6, except admits that some of its pesticide sales move in interstate commerce. Defendant specifically denies that all pesticide sales made by it are in commerce.

7. Admits the allegations of paragraph 7, except that it denies the existence of the unlawful acts and practices referred to in paragraph 7.

8. Admits Spray-Rite has sold pesticides in the Corn Belt; denies the allegations of the second and third sentences of paragraph 8 and denies knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 8.

9. Denies the allegations in the first sentence of paragraph 9, specifically including any legal conclusion with regard to the contractual relationship between Spray-Rite and Monsanto, and avers that Spray-Rite was a distributor of Monsanto herbicides from 1957 until August 31, 1968; admits that from time to time Monsanto and Spray-Rite executed certain agreements entitled "Formulated Pesticide Products Distributor Agreements," but denies any legal conclusions contained in the second and third sentences of paragraph 9 with regard to the contractual relationship between Spray-Rite and Monsanto; admits the remaining allegations in the third sentence of paragraph 9, except that it denies Spray-Rite performed satisfactorily as a Monsanto distributor; denies the allegations in the fourth sentence of paragraph 9 and avers that during the years 1966, 1967 and 1968 Spray-Rite purchased approximately \$298,000, \$625,000 and



\$483,000, respectively, of Monsanto herbicides from Monsanto; denies the allegations in the fifth sentence of paragraph 9 and denies knowledge or information sufficient to form a belief regarding the remaining allegations in paragraph 9.

10. Admits Spray-Rite was a distributor of Monsanto herbicides until August 31, 1968; denies the allegations contained in the second, third, fourth, and last sentences of paragraph 10, and denies knowledge or information sufficient to form a belief regarding the remaining allegations in paragraph 10.

11. Denies the allegations contained in paragraph 11 and in paragraphs 11(a) through 11(1), except that it admits that it established Monsanto Agricultural Centers in the mid-1960's, that some of these Centers were located in the Corn Belt, and that these Centers sold Monsanto pesticides and other agricultural products.

12-14. Denies the allegations contained in paragraphs 12 through 14.

## COUNT II

1-14 The averments contained in paragraphs 1-14 of the answer are hereby incorporated as defendant's answer to paragraphs 1-14 of Count II.

15. Denies the allegations contained in paragraph 15 of Count II.

## AFFIRMATIVE DEFENSES TO COUNTS I AND II

### FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The claims contained in the complaint are barred in whole or in part by the applicable statute of limitations.

AFFIRMATIVE DEFENSE TO COUNT II ONLY

FIRST DEFENSE

Any differentials in prices charged by defendant made only due allowance for differences in the cost of sale or delivery resulting from the differing methods or quantities in which commodities were sold or delivered to purchasers.

SECOND DEFENSE

Any differential in price between different purchasers of defendant's commodities of like grade and quality was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

THIRD DEFENSE

Any difference in prices of commodities sold by defendant was in response to changing conditions affecting a market or the marketability of the products concerned.

FOURTH DEFENSE

The sales of defendant's products complained of were not in commerce within the meaning of the Robinson-Patman Act.

Answering the unnumbered WHEREFORE paragraph and sub-paragraphs 1-4 therein, defendant denies that plaintiff is entitled to the relief therein requested or to any relief whatsoever.

WHEREFORE, defendant MONSANTO COMPANY demands judgment dismissing the complaint and granting

such other and further relief as to the Court may seem just and proper.

/s/ FRED H. BARTLIT, JR.  
Fred H. Bartlit, Jr.  
*Attorney for Defendant,*  
MONSANTO COMPANY

Of Counsel:

ROY E. POTTER  
Monsanto Company  
St. Louis, Missouri

KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

DATED: January 27, 1976

[Certificate of service omitted in printing.]

*In The*

# **United States District Court**

*For The*

*Northern District of Illinois,*

*Western Division*

---

---

**SPRAY-RITE SERVICE CORPORATION,**

an Iowa Corporation,

*Plaintiff,*

vs.

**MONSANTO COMPANY,**

a Delaware corporation,

*Defendant.*

NO. 72 C 12 W

---

---

Transcript of Proceedings

February 20, 1980

Volume XXIII

[Excerpts from Jury Instructions]

\* \* \*

[4348]

This antitrust lawsuit is brought by the plaintiff under Section 1 of the Sherman Antitrust Act, which deals with restraints of trade and provides that:

“Every contract, combination...or conspiracy, in restraint of trade or commerce...is... illegal...”

All business contracts restrain trade to some degree, but the Sherman Act does not prohibit all contracts. By prohibiting restraints of trade, the antitrust laws mean that unreasonable restraints of trade are prohibited; reasonable restraints of trade are not prohibited by the antitrust laws.

[4349]

In order to recover under Section 1 of the Sherman Act, the plaintiff has the burden of proving each of the following propositions:

1. That there was an agreement, conspiracy or combination between the defendant and one or more non-defendant co-conspirators to accomplish one or more of the alleged violations of Section 1 of the Sherman Act;
2. That one or more of these alleged antitrust violations by the defendant was a direct and material cause of injury to the plaintiff's business and property;
3. That the plaintiff thereby sustained damages in an amount capable of reasonable ascertainment.

If you find from your consideration of all the evidence that each of these propositions have been proved, your verdict should be for the plaintiff, but on the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved, your verdict should be for the defendant.

The plaintiff in this case seeks damages for injury to his business and property claimed to have been suffered or sustained as a result of alleged violations by the defendant of the antitrust laws of the United States.

Specifically, the plaintiff claims:

[4350]

1. That defendant and one or more of its distributors conspired or combined to fix, set or stabilize the resale price of defendant's product;
2. That pursuant to and as a part of, this resale price maintenance plan the defendant has imposed, and the non-defendant co-conspirators have acquiesced in, certain customer and territorial restrictions regarding the distribution of defendant's product;

3. That plaintiff was terminated as a contract distributor by defendant as a result of said conspiracy or combination;

4. That after plaintiff's termination defendant and one or more of its distributors conspired or combined to restrict plaintiff's access to defendant's products.

The defendant Monsanto denies these claims. Monsanto contends that it made the decision not to renew plaintiff, Spray-Rite's contract independent and unilaterally for its own business reasons and that plaintiff's business was affected by normal competitive forces and not by any conspiracy.

\* \* \*

[4351]

A conspiracy is a combination of two or more persons, by concerted action or by coercion resulting in acquiescence to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of partnership, in which each member becomes the agent of every other member. The essence of a conspiracy is a combination or agreement to violate or to disregard the law.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interest, does not necessarily establish proof of the existence of a conspiracy. However, such business behavior is circumstantial evidence which you may consider with all the other evidence in the case in arriving at your verdict.

The evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by word spoken or in writing, stated

[4352]

between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What a preponderance of the evidence in the case might show, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not show that all the means or methods set forth in the plaintiff's complaint were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all persons alleged to have been members of the claimed conspiracy were such. What a preponderance of the evidence in the case must show is that the alleged conspiracy was formed; and that one or more of the means or methods described in the complaint was agreed upon to be used in an effort to effect or accomplish some object or purpose of the conspiracy alleged in the plaintiff's complaint; and that two or more persons, including the defendant, were knowingly members of the conspiracy alleged in the complaint.

A conspiracy requires proof that there be a single plan and purpose, the nature and general scope of which is known to each person who is claimed to be a member

[4353]

of the conspiracy. Unless the individuals involved understood from something that was said or done that they were in fact committed to the purposes of the conspiracy, there is no violation. There is no such thing as an unknowing or unwitting conspirator.

There cannot be a conspiracy unless there is a commitment between two or more persons working for different companies. To prove a conspiracy here, plaintiff must prove by a preponderance of the evidence that Monsanto employees conspired with persons who did not work for Monsanto.



[4354]

The fact that distributors complain about prices or anything else does not in itself mean that a conspiracy existed. Even if you find that Monsanto acted in exactly the way that complainants would have wished, that does not prove the existence of a conspiracy; it would, however, be evidence that you can take into consideration in deciding whether or not a conspiracy existed.

In your consideration of the evidence in the case as to the conspiracy charged, you should first determine whether or not the conspiracy existed, as alleged in the complaint. If you conclude that the conspiracy did exist, you should next determine whether or not the defendant, or one or more of its distributors were knowingly members of the conspiracy.

If it appears from a preponderance of the evidence in the case that the conspiracy alleged in the plaintiff's complaint was knowingly formed, and that the defendant or one or more of its distributors, normally became members of the conspiracy, either at the inception or beginning of the plan, or afterwards, then the success or failure of the conspiracy to accomplish the common object or purpose is immaterial, so long as the plaintiff sustained some damage as a result of the conspiracy.

\* \* \*

[4355]

Under Section 1 of the Sherman Act, there are agreements, conspiracies and combinations whose nature and effect on competition are conclusively presumed to be unreasonable and therefore illegal, without any inquiry as to the harm they have caused or the business excuse for their use—they are "illegal per se."

Among the practices which the courts have declared to be per se illegal, and therefore unlawful in and of themselves, are price-fixing or resale price maintenance and concerted refusals to deal. If you find that the defendant participated in any agreement, conspiracy or combination to fix or stabilize resale prices or to refuse to deal with the plaintiff,

then the defendant has violated Section 1 of the Sherman Act. Once the existence of such an agreement, conspiracy or combination has been established, no evidence of actual public injury is required, and no evidence of reasonableness can be considered in justification. Such actions violate the anti-trust laws.

Any conspiracy or combination formed for the purpose and with the effect of raising, depressing, fixing,

[4356]

rigging or stabilizing the price of any commodity in interstate commerce is illegal per se.

Where a manufacturer undertakes to distribute its goods through a chain of independent dealers, the consumers' ability to purchase at a free market price will be enhanced by the retailer's unrestricted ability to set his retail price at the level he feels most commensurate with local demand.

If you find that the defendant conspired or combined with one or more of its distributors to raise, depress, fix, p. g or stabilize the resale price of defendant's products, then the defendant violated Section 1 of the Sherman Act.

It is also per se illegal for a manufacturer to utilize customer or territorial restrictions pursuant to or as a part of, a comprehensive price-fixing plan or an agreed refusal to deal. Therefore, if you find that the defendant conspired or combined with one or more of its distributors to utilize the defendant's customer or territorial restraints in order to effectuate price stabilization or resale price maintenance, or to detect and prevent resale price-cutting, or to effectuate any restriction on plaintiff's access to defendant's products, then the defendant has violated Section 1 of the Sherman Act.

It is also unlawful for a manufacturer to

[4357]

terminate or threaten to terminate one of its distributors for the reason that the distributor objected to, or departed from either the manufacturer's price-fixing or stabilization plan or

any customer or territorial restraints which are part of that plan. Therefore, if you find that termination or threat of termination was utilized by the defendant as a coercive tool against the plaintiff or any other distributor or defendant to force adherence to any aspect of a resale price maintenance plan, such termination or threat of termination is unlawful. It does not matter whether the defendant initiated the coercion, or whether it was done in response to pressure or complaints from one or more of its distributors.

A termination or threat of termination to compel adherence to any aspect of a resale price maintenance plan is unlawful, whether or not there was any reasonable justification.

\* \* \*

[4363]

The law recognizes a limited right in the manufacturer to select its distributors, but that right is neither absolute nor exempt from regulation. If the manufacturer's selection is accompanied by unlawful purpose, conduct or agreement, it violates the Sherman Act.

A manufacturer may announce suggested resale prices and refuse to sell to a distributor which refuses to abide by those suggested prices. However, the manufacturer's conduct must be totally independent. In deciding whether the manufacturer's conduct was completely independent and unilateral, you should look to what the participants did, rather than the words they used.

Therefore, the defendant's limited right to choose its distributors does not include the right to, in any way, conspire or combine with one or more of its distributors to fix or stabilize resale prices, or to refuse to deal, or to commit any other act which has been described in these instructions as a per se violation of the antitrust laws.

A manufacturer has the right to print suggested prices on its products, to advertise those prices, to issue lists of suggested resale prices, and to send those price lists to its distributors or other customers. A manufacturer may also ask its customers to follow such suggested prices. However, a manufacturer may not conspire

[4364]

or combine with its distributors so that the distributors are required to sell at the suggested prices or to raise, fix or stabilize the prices charged by the distributors to their customers.

The fact that a program may have an effect on prices, even raising them, does not mean that it is part of a price-fixing plan. Imposing normal competitive requirements on a distributor, such as encouraging a distributor to advertise, may affect the distributor's costs, thereby indirectly affecting the price at which the distributor will sell the product. That does not necessarily mean that those requirements are part of a price-fixing conspiracy or combination, although you may find that they are part of a conspiracy or combination.

Defendant has the right to assign distributors to areas of primary responsibility and to assign points where distributors can pick up products or take delivery, so long as the decision to do these things is independent and not because of a price-fixing conspiracy or combination.

The defendant has a right to select distributors that it thinks will do the best job for it provided that in doing so the defendant's decision not to renew the plaintiff's contract was not made pursuant to a price-fixing conspiracy or combination.

Once plaintiff was not renewed as a Monsanto

[4365]

distributor, defendant had no obligation to sell to it on the same terms that it offered to its distributors who had contracts, unless its decision not to sell to Spray-Rite was a part of a conspiracy or combination to refuse to deal with Spray-Rite. The fact that some of Monsanto's policies may have affected the price paid by all non-contract sellers, including plaintiff, does not necessarily establish a conspiracy, but may be evidence which you can consider along with all the other evidence in the case in deciding whether a conspiracy existed.

Defendant has the right to implement incentive programs in order to encourage its distributors to perform certain marketing functions unless those programs are part of a price-fixing conspiracy or combination.

\* \* \*

A-27

*In The*

# **United States District Court**

*For The*

*Northern District of Illinois,*

*Western Division*

---

---

**SPRAY-RITE SERVICE CORPORATION,**  
an Iowa Corporation,

*Plaintiff,*

vs.

**MONSANTO COMPANY,**  
a Delaware corporation,

*Defendant.*

NO. 72 C 12 W

---

---

Transcript of Proceedings

February 21, 1980

[Jury's Answers to Special Interrogatories]

\* \* \*

[2]

Question No. 1:

"Was the decision by Monsanto not to offer a new contract to plaintiff for 1969 made by Monsanto pursuant to a conspiracy or combination with one or more of its distributors to fix, maintain or

[3]

stabilize resale prices on Monsanto herbicides?"

The answer is: "Yes."

Question No. 2:

"Were the compensation programs and/or areas of primary responsibility and/or shipping policy created by Monsanto pursuant to a conspiracy or

combination with one or more of its distributors to fix, maintain or stabilize resale prices of Monsanto herbicides?"

That answer is: "Yes."

Question No. 3:

"Did Monsanto conspire or combine with one or more of its distributors so that one or more of those distributors would limit plaintiff's access to Monsanto's herbicides after 1968?"

The answer is: "Yes."



**PLAINTIFF'S EXHIBIT 19**

**SPRAY-RITE SERVICE CORPORATION**

10216 N. Second (Hwy. 51 North)

Rockford, Illinois 61111

Phone 815-633-2357

April 12, 1968

Dear Customer:

Would you be interested in Geigy Sequestrene zinc chelates in liquid form?

**Advantages:**

- a) Convenience of working with a liquid instead of a wettable powder.
- b) Readily available to plants in correcting zinc deficiency in corn.
- c) No increase in cost.

Enclosed, please find information sheet on Sequestrene zinc metal chelates.

Since the liquid form would seem a natural for liquid fertilizer plants, we are contemplating offering this material in 55 gallon drums at a cost of \$2.94 per gallon. One gallon contains over 6 lbs. of elemental zinc ( $\text{NA}_2\text{ZN}$  liquid 6%).

**Therefore:**

- a) Would you be interested in purchasing any drums of liquid zinc this year?
- b) If yes, please give an estimate of gallons needed. (— gallons). This is not an order, but just an indicator of approximate interest. If we can supply, we will phone, or write, informing you of availability.
- c) Are you now adding any minor elements in chelated form to your liquid blends?

d) Would you be interested in attending a micro nutrient Seminar in LaSalle, Illinois area, at some future date?

e) We hope to have the latest information available regarding trace element needs in Mid-West area, and it will be available to all customer's of Spray-Rite Service Corporation.

Spray-Rite Service Corporation has been in agricultural chemical distribution for 17 years in the Northern one-half of Illinois, Southern Wisconsin and Eastern Iowa—handling only agricultural chemical compounds and equipment. Compounds such as Atrazine, Ramrod, Randox, Aldrin, Diazinon, DaSanit, Liquid Di-Syston, 2, 4-D, Activate 11-E (the pioneer in crop oil) and many more. Spray-Rite has played a very important part in introducing many, if not most, of above compounds and policy of selling as a brokerage house, we do a very large volume in above.

If we can be of help in liquid zinc or on any other matter, please write, or phone, Spray-Rite Service Corporation, c/o Don Yapp, 10216 No. Second St., Rockford, Illinois 61111. Telephone (area code) 815-633-2357.

Thank you.

Sincerely,

/s/ DON YAPP

Don Yapp, Pres.

Spray-Rite Serv. Corp.

DY:hf

**PLAINTIFF'S EXHIBIT 20**

**SPRAY-RITE SERVICE CORPORATION**

10216 No. Second Street

Rockford, Illinois, 61111

Tel. 1-815-633-2357

April 15, 1968

Dear Customers:

Another growing season is upon us—are you ready? Did you get to attend any of our supper Ag. Chemical meeting's earlier in the spring? If not, and we can help you in making a decision, please phone me, and if you wish to come to the office, please phone ahead and we will be happy to meet with you at any time, including Saturdays and Sundays, day or night.

We have a very good supply of all of the good chemical compounds at this writing. At this date, April 15, prices generally are equal, or below 1967, and in good supply.

We are happy to report volume sales of Ag. chemicals are as good, or better than, 1967. Below average sales increase on corn herbicides, but above average sales increase in soybean herbicides. Indicating, of course, fewer acres of corn, and more of soybeans.

The extremely dry conditions in the Western corn belt, is beginning to influence, to a degree, chemical and fertilizer demand in that area, and could put additional pressures on selling prices in this area. However, we are optimistic that it will rain and put things in a normal perspective. The supplies of Randox 20G are more than adequate at this time, and some really big bargains are being given. We are losing many dollars below our cost on every bag and the only question is how many dollars? We have 50,000 lbs. remaining on a first come, first served basis, and save many dollars per acre. Because of over supply of Randox 20G and bargain prices, it deserves your deep consideration if you apply granular materials on corn and soybeans. Example: you can

save from \$2.75 to \$3.00 per acre over Amiben granules and the difference in those materials isn't nearly that great. Hence: while supply lasts, you can't miss with Radox granule for soybean grass control. *1968 Best Buy—Radox 20G.*

*Rootworms 1968* (resistant Northern and Western varieties). *Best buy—Diazinon 14G*—Use 7 to 8# per acre in 7 inch band ahead of packer wheel at planting time. If you purchase Diazinon here, we furnish pattern spreaders, free of charge. If you have already purchased Diazinon here and need these spreader plates, please inform and we will send them to you free of charge, as long as they last. If you have a cultivator applicator, and apply Diazinon 14G at this time, these spreader plates would not be necessary. We have a few Comfort cultivator applicators available. You should be aware, by this date, if you are, or are not in rootworm resistant areas. If you are, this resistant matter deserves your deep consideration if on 2nd, 3rd or more years of continuous corn. The extra \$1.00 or so more cost per acre over Aldrin, can be lost 10 fold or more. Be especially alert to this one. Of the ten or so compounds being offered now, for this resistant rootworm, we feel Diazinon is as good, or better, in performance than the others, and in most cases much safer and more reliable (been on market much longer). We have put all our eggs in this basket—*Diazinon for 1968.*

The only other compound we are putting out for trial this year, is "*Dasanit*". This compound, as does most other newer compounds, carries the "*Skull and Crossbones*" markings, and deserves more caution in handling than does compounds we have been using in the past. "*Dasanit*" 10% granule is to be used at rate of 5 to 7½ lbs. per acre, spread over a 7" band ahead of packer wheel at planting time only. Dasanit 10G has complete label approval for planting time application. Dasanit 10G has toxicity rating similar to \_\_\_\_ granules which have been used by many growers, although not handled by ourselves. We urge those of you who know they have rootworm resistance to try a few acres of Dasanit in

comparison with Diazinon 14G. We would be happy if you would inform us of results and, in fact, to inform us to check for you about August 1st, give or take a week or so before or after, depending on rootworm egg hatch. Dasanit is supposed to be a long lasting insecticide, hence, the first planting, if very early (last of April or early in May) would be best time of application. The cost per acre is very similar to Diazinon 14G. Dasanit 10G is very new, just getting label approval within last month for planting time only application. The Chem-Agro Corporation, the manufacturer's of this compound, have very high hopes for the future for this material in the corn rootworm market. Hence; let's give it a trial.

Atrazine 80W—King of all corn herbicides, will remain master of all for some years to come. The best, cheapest, and most versatile.

We are getting our chemical equipment accessories department in full inventory: 6, 7 and 8 roller pumps, Ace centrifugal pumps, both 600 and 1,000 PTO models, hi volume transfer pumps with and without engine, nozzle bodies, elbows, tee's and caps in brass, iron and nylon: nozzle tips of most all sizes in brass and stainless steel, gauges 0-100 PSI, 3-way control valve, pressure regulators, Delavan new jet agitator (Better than block type) gate valve in most sizes, liquid fert. S.S. flood type tips in most sizes, hoses of all sizes from 1/8" thru 2" including hose couplings to go with it; granular equipment "Comfort" for planter or cultivator. We have a large inventory of older types of planter granular applicator (hopper handles for 2 rows instead of one) that will mount on many of older type planter models, both 2 row and 4 row (most new type granular applicators over the row will not mount on these older planters). These older models also would be good for dry "POP-UP" fertilizer application. Your net cost here is \$15.00 per row complete (including hoppers and mounting brackets and tubes). At that price are as cheap as iron junk price. A fantastic buy if you can use, as long as they last. Also have supply of 4 Row Band Spray

A-34

attachments (everything up to flo-control). You must have pump, pump hoses and control valve for a net price of \$25.00 per 4 Row attachment. Here is an opportunity for you fellows wanting to band apply in spray form (Atrazine 80W) that are not now set up, but getting it done custom.

Enough for now—more to follow on other subjects within one week.

Sincerely,

/s/ DON YAPP

Don Yapp, Pres.

Spray-Rite Service Corporation

DY:hf

**PLAINTIFF'S EXHIBIT 42**

**SPRAY-RITE SERVICE CORPORATION**

10216 N. Second (Hwy. 51 North)

Rockford, Illinois 61111

Phone 815-633-2357

Dear Customer:

We have available the finest work yet printed on Atrazine carryover titled "Soil Factors contributing to Atrazine Carryover" by Russell S. Adams, Jr., Univ. of Minnesota. If you wish a copy, please drop us a line.

Lots of talk this year on "combinations" but don't you be *carried away* in your concern on "Carryover". Most companies suggest a 3 and 1 combination—Three of something else and one of Atrazine. The combination would be better if it was one and one. The combination would be still better if it had one of something else and 3 of Atrazine—and *best of all* if it was *straight Atrazine*.

Combinations will always be more costly; less versatile, more irritational (Ramrod-Atrazine) less selective (Sutan-Atrazine, Lorax-Atrazine). The one compound heads and shoulders over all in weed control in corn—**ATRAZINE**—, and don't you forget it. In most cases residue is minor (end of fields and low spots). If you use less Atrazine naturally you have less residue and less Atrazine can be used if applied early-post with Activate 11-E (Spray Oil).

In the market combinations are having limited success and that is where they belong. In limited cases—certain particular circumstances—combinations could be beneficial. However, don't think for a minute, in most cases, that combinations with Atrazine is as good as Atrazine alone and this includes Primaze. Many, if not most, except in limited circumstances, that use combinations this year will be back to *straight Atrazine* next year. We will have complaints of irritations and "didn't last long enough" on Atrazine/Ramrod combinations. We will have complaints of corn



injury from others Atrazine/Sutan, Atrazine Lorax and Primaze.

Atrazine is "*King of the Road*" and will stay on top for a good many years to come in our estimation. I ask you—how are you going to make it better? Money is short in 1969 as it is in most years, but don't you sell your weed-killing dollar short.

Progress report this date, April 10, 1969: Spring is delayed and the "big rush" is just ahead. There is "*very low*" *farm chemical inventory in the field*. Please take note of that last statement and heed the consequence (shortages, delays and higher and possibly much higher prices).

The return from investment in farm chemicals has been exceptional this past decade. Tonage used has exceeded 25% each year these past 10 years. A gain of 25% each year over the previous year. Think about this—was it because of "super salesman" in our industry or a *three fold gain over costs*. Keep above in mind if you feel you can afford to "cut-back" in 1969. If you are losing money now you will lose far less if you use the proven "good compounds" we have available. You don't have to *gamble* on untried compounds, use the *proven sires* in the most effective method. Watch out for resellers pushing "Profit over Product".

You heard us explain our philosophies and attitudes on marketing pesticides at our dinner meetings in January, February and March at Rockford, DeKalb, Belvidere, Warren, Oregon, Rock Falls, Dixon, Mt. Morris, Marengo, Stockton, Peru, Monmouth, Freeport, Forreston, Walnut, Woodstock, Sycamore, and Morris in Illinois, and Janesville, Mt. Horeb, Stoughton, Beaver Dam, Darlington, Brodhead in Wisconsin. We hope you gained something from these meetings. Now, for those of you who haven't yet ordered your needs, we are again soliciting your order to help back our approach to more efficient, reputable, up-to-date marketing of pesticides. We have been in this business exclusively (no side-line here) for 17 years and hope to be another 17 with

A-37

your support. Go see your neighbor—jump in your truck—and come on over day or night including weekends. If still undecided give us a phone call at any hour.

We are running our business as you know it today *for your benefit* and we hope for our own—You be the Judge.

Sincerely yours,

/s/ DON YAPP

Don Yapp, President  
Spray-Rite Serv. Corp.

DY/kd

**PLAINTIFF'S EXHIBIT 134****1966 RAMROD MARKETING PLAN OF MONSANTO**

\* \* \*

[4]

**III. Status and General Sales Strategy**

Monsanto's position in the prime foxtail area in the heart of the Midwest Cornbelt is one of dominance by the Radox products (see map—page 4a). In this area, which includes central Illinois, the eastern  $\frac{2}{3}$  of Iowa, southern Minnesota and west central Indiana, Radox and Radox T have become the herbicides of choice, largely at the expense of Geigy's Atrazine. In this area of heavy soils, Radox performs consistently and effectively. Outside of this area, Radox has performed erratically.

Ramrod performs equally well in this important foxtail area; but also performs well on lighter soils where Radox has not been satisfactory.

**SALES STRATEGY FOR 1966**

With limited availability of material facing us in 1966, the excellent performance of Radox in the foxtail area and the fine performance of Ramrod outside the prime foxtail area, our strategy is to move into those areas where Radox does not perform in order to gain maximum penetration as rapidly as possible. Sufficient material will be allotted to the Radox area to supply MAC's and to pacify customers who are clamoring for Ramrod.

We will have a problem in restricting Ramrod within the Radox area where growers have had good Ramrod experience and are eager to make a change. This complicates our program and poses a practical problem in getting our message across to our distributors, who are only too willing to take the course of least resistance by selling Ramrod

within the prime Radox area where both products are well accepted.

Since our 1966 objective is also to sell maximum quantities of Radox, any sales of Ramrod within the Radox area, as shown on the map, may hurt our Radox sales efforts. Therefore, we will have to be assured that our customers, both wholesale and retail, devote their primary efforts to promoting Ramrod outside the Radox area.

All of this must be accomplished without detracting from our all out sales efforts on Radox and Radox T.

\* \* \*

[26]

## II. Competitive Products

### A. Corn

In the Midwest market outside the Radox belt, Atrazine is *the* corn herbicide. We are outsold (on an acreage basis) 2 or 3:1 by Atrazine. Although Atrazine has some drawbacks, it still is the preferred corn herbicide of many farmers because of:

1. Outstanding weed and grass control on full season basis.
2. Strong state and influence group support.
3. Excellent corn tolerance.
4. Pre and post-emergence adaptation with liquid fertilizer.
5. Perennial grass control (quack grass in Wisconsin, Michigan, Minnesota and Illinois).
6. Superior performance at low rates on light soils.
7. Non-irritating to user.
8. Low cost—farmer can broadcast Atrazine at near band cost for competitive products.

Ramrod has these competitive advantages over Atrazine:

1. Superior grass control.
2. No soil residue problems.
3. Better customer support because of Geigy's pricing and distribution policies.
4. Multi-crop use—corn and soybeans.
5. Available in granular form.

B. Soybeans

Amiben is our strongest competitor in the soybean market followed by Treflan. Amiben offers the grower the following features:

1. Both grass and broadleaf control.
2. Easy to handle.
3. Performs on light or dark soils.
4. Works as liquid or granule.
5. Good experiment station and extension service support.

[27]

Ramrod has these competitive advantages over Amiben:

1. Lower cost per acre—\$5.90 vs \$3.30 for Ramrod.
2. Less phytotoxicity.
3. Less affected by rainfall.
4. Single rate for all soils

Treflan is our big competitor on soybeans and cotton in the Delta—less so in the Midwest. It offers the following points:

1. Good results under adverse weather conditions.
2. Full season control.

3. Wide range of broadleaf and grass control.

4. No irritation.

Advantages of Ramrod over Treflan:

1. Less likely to cause crop injury.

2. Better grass control.

3. No residue problem.

4. Available in granular form.

5. Same rate of application on all soil types.

6. No incorporation required.

**PLAINTIFF'S EXHIBIT 136**

**MONSANTO'S CORN/SOYBEAN/SORGHUM  
HERBICIDE-DISTRIBUTOR PRESENTATION**

Dated September 5, 1968

\* \* \*

[3]

For Monsanto's herbicide program in corn, the two principal products that Monsanto will be interested in for 1969 are Ramrod and a mixture of Ramrod and Atrazine.

In 1968, Ramrod performance was outstanding throughout the Midwest. In situations where dry conditions prevailed after planting, Ramrod was the only herbicide giving consistent grass and broadleaf weed control and still providing outstanding crop safety. This year, to confirm the results seen earlier, we conducted a wide range of rate studies from 4 to 6 pounds of active per acre, or 20 to 30 pounds of granules and 6 to 9 pounds of the wettable powder on a broadcast basis.

At the 5 pound rate and higher, we got outstanding smartweed control and improved broadleaf weed control over-all. Based upon this, we have taken steps to obtain clearances for a 6 pounds active (30 pounds of granules or 9 pounds of wettable powder broadcast basis) for use in 1969. We feel this additional clearance will allow the farmer to obtain broad spectrum weed control with absolutely no danger of crop carryover on the heaviest of soil types and high organic matter.

Ramrod still is the outstanding herbicide in terms of grass control, crop safety, and elimination of the hazards of soil carryover which plagued the whole Midwest in 1968.

It should be re-emphasized that Ramrod now has full clearances and tolerances established with no restrictions on silage corn or corn used for grazing.



[15]

**CHART 24 '69 COOPERATOR COMPENSATION PLAN****Comments:**

This chart requires careful preparation since its a new approach and has been the center of attention for Distributors who have people and programs that can do us some good—and we will pay them for the good they do.

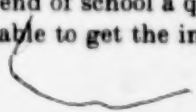
Read the purpose first. Bob Blackwelder prepared the following to help you.

The purpose of the Cooperator Plan is to encourage promotion activities that will help get more Monsanto products sold and to compensate you directly for providing these promotion activities. We recognize that these activities are valuable to Monsanto and if performed properly, we are willing to pay for them. On the same hand, we don't want to pay people for these activities if they aren't doing them. We'll look upon the compensation derived from this plan as a part of your profit margin on these herbicide products.

[16]

1. We expect to provide your technical personnel with enough technical background on Monsanto products at the school so that he can easily answer questions that arise in his organization concerning these products. We want your men to be able to answer questions concerning our products as if they were being answered by a Monsanto technical man.

This school will be conducted by Monsanto's Market Development Department in St. Louis during the last three weeks in October. This school will last about one and one-half days and at the end of school a quiz will be given to see if we have been able to get the information



across. The quiz will also tell us who needs extra help so that we can provide same.

Monsanto will pay motel and meal expenses while your men are in St. Louis. We will provide you with a form on which you may submit the names of the men you wish to attend this school. We expect that the men you send have as their primary job that of giving technical assistance to your sales personnel and their customers. We will pay you \$500 for each man you send providing he passes the quiz and graduates from the school.

2. For each of your Reseller (Dealer) managers that you arrange to attend Monsanto's Reseller Herbicide Clinic, we will pay you \$50, providing he stocks at least 24,000# of Monsanto products during the season.

For the manager of that outlet attending, we will pay \$70. He will be paid \$20 the day of the clinic, and he will receive an additional \$50 upon verification of his first truckload of Monsanto products. We will encourage the reseller to send all his people to this school if he thinks they will benefit from it, but we will pay only \$70 per reseller.

These clinics will be held during November in several areas of each state and will be taught by our district Market Development Supervisors. The Pesticide Program Supervisor for the region will be responsible for co-ordinating and conducting these clinics.

[17]

3. We will pay you \$25 for each grower meeting that you organize with your reseller's outlets. Monsanto products must be given a minimum of one hour on the program. A minimum of 20 growers or 6,000 acres of corn and soybeans must be in attendance. Monsanto must be notified in advance of the grower meeting to enable Monsanto to aid in any way possible and possibly

to participate in the program if you desire and he can. Forms will be provided for you to submit as verification of the meeting. The reseller will be paid \$50 to help cover the expenses of the meeting.

4. You will be paid \$500 for each Monsanto approved demonstration field in which at least two Monsanto herbicides are applied. Each of these herbicides must be applied to a minimum of one-fourth acre each and must be properly identified. Each field must be toured by at least 50 farmers to be eligible for payment. A limit of two fields will be eligible for payment. Monsanto Market Development Supervisor for the area must approve the field. He will help plan out these fields for you. A Monsanto representative must be on hand to assist you in conducting the tours.

5. We will pay you \$200 for each additional tour of each of the approved fields that you conduct providing at least 50 farmers are present. There will be a limit of five paid tours per field. A Monsanto representative must be on hand at these tours to assist you in any way possible and to aid in answering questions.

**Plaintiff's Exhibit 137**

**MONSANTO'S 1968-1969 MARKETING POLICY FOR  
CORN AND SOYBEANS HERBICIDES**

Effective: September 1, 1968

\* \* \*

[3]

**I. OBJECTIVES**

Ag Division's Objectives in this area are:

**1. Push Ramrod on Corn**

a. Increase our granular sales in present Ramrod G use areas and establish Ramrod G in other major corn areas where:

- (1) Farmers have granular application equipment,
- (2) Foxtail is prevalent,
- (3) Crop rotation is practiced, and
- (4) Atrazine damage or poor performance has been noted.

**RAMROD GRANULAR SALES OBJECTIVE = 55M POUNDS.**

b. Make a major penetration into the sprayable market with Ramrod 65WP, Ramrod-Atrazine tankmix, and Ramrod-Atrazine package mix.

**RAMROD WP SALES OBJECTIVE = 7M POUNDS.**

**2. Push Lasso on Soybeans**

a. Sell Lasso granules in all areas where farmers have granular application equipment and foxtail is prevalent.

**LASSO GRANULAR SALES OBJECTIVE = 8M POUNDS.**

b. Sell our entire Lasso EC supply.

LASSO EC SALES OBJECTIVE = 600M GALLONS.

c. Lasso G and EC must be pushed on soybeans and it must penetrate new geographic areas; primarily the Delta, Ohio, Indiana, Illinois, Iowa, Missouri, and Minnesota.

3. *Farmer Demand* for Monsanto herbicides must be created by Monsanto personnel in 1968-69. This is the Number One Job of all field marketing personnel.

4. *Monsanto Herbicides on Every Reseller's Shelf Early.* Must get on shelves where we haven't been before.

5. *Early Shipments* to Distributors and Resellers. 80% of shipments made by March 15, 1968.

[4]

6. *Improved Communications* between all Monsanto personnel, customers (Distributors, Dealers, and Farmers), influence groups (University, Extension, Vo-Ag, Radio Farm Editors, Farm Press, etc.).

All Monsanto personnel must be telling the same story at all levels of sales to all levels of customers.

7. Cooperate with all Resellers and Distributors to see that Monsanto products move off the shelves they stock. It is not our intent to feud with a Distributor over a Reseller's shelf space, but to concentrate our efforts on demand creation and movement to farmers.

8. Treat 33% of treated corn acres in corn belt states.

$50\overline{M}$  acres of corn  $\times$  50% treated  $\times$  33% Monsanto =  $8.3\overline{M}$  acres. (1968 Corn Belt Survey shows Monsanto had 26% of treated corn acres.)

9. Treat 10% of treated soybean acres in U.S.

$40\overline{M}$  acres of soybeans  $\times$  55% treated  $\times$  10% Monsanto =  $2.2\overline{M}$  acres.

## II. PRODUCTS COVERED

This policy applies only to the sale and distribution of the following corn and soybean herbicides:

Ramrod 20G	Lasso 10G
Ramrod 65WP	Lasso 4# EC
Ramrod-Atrazine	Randox 20G
Package Mix	Randox 4# EC
Roundup 20G	Randox T 35G
Roundup 65WP	Randox T EC
Wallop G	

*Note:* Certain of the above products have geographic and/or crop limitations which affect their sale and distribution. Monsanto personnel must be aware of these limitations and under no circumstances recommend or advise their use. If in doubt, clear with the marketing development man assigned to the specific area involved.

\* \* \*

[7]

### 3. Distributor Appointment & Renewal

Distributorships will be approved by the Directors of Domestic Marketing and Agricultural Chemicals. Distributors will be notified of appointment by a one-year written contract (Formulated Pesticide Products Distributor Agreement) which will be sent by registered mail. The Agreement expiration date will be July 31, 1969. Properly executed agreements will be the responsibility of the Herbicide Product Manager. Communicating Distributor information to the field is also his responsibility.

The Distributor Agreement will spell out the state or states considered by Monsanto to be the Distributor's primary area of responsibility. These are the only states in which we will ship these products to Distributors. It must be understood that Monsanto cannot and will not stop the Distributors from selling into other geographic areas; however, one of the major points for measuring the performance of

each Distributor is the exploitation of markets in his primary areas assigned.

Distributorship contracts (Agreement) will be renewed from year to year depending upon Monsanto's need for Distributors and upon the Distributor's performance and capabilities, using the following criteria:

a. Financial and physical capability of handling large volumes of products in a short period of time. (Upwards of 300M pounds on a 20% granular equivalent basis, depending on the nature of the products and marketplace, during a 12-15 week period.)

b. Ability and performance in assisting Monsanto to solve special logistics problems. (Early take, warehousing, LTL trucking, in-season quick delivery.)

c. Supplying technically trained personnel to convey the Monsanto product messages to the Resellers and farmers.

d. Exploitation of the potential markets for Monsanto's products in the Distributor's assigned primary area of responsibility.

e. Cooperation shown in resolving end-of-season inventories.

f. Degree of participation in special advertising and promotion campaigns.

g. Reasonable growth from year to year (10-20% per year).

[8]

h. Assistance given Monsanto in pinning down specific product movements into Monsanto Salesmen's territories as an aid in monitoring Salesmen's performance.



**PLAINTIFF'S EXHIBIT 139**

**MONSANTO'S CORN/SOYBEAN PRODUCT AREA  
BUSINESS PLAN 1970-1975**    Date: September, 1970

\* \* \*

[1]

**I. INTRODUCTION.**

The purpose of this document is to set forth a planning framework for day to day and year to year business decisions affecting Monsanto's domestic corn/soybean product mix.

This plan addresses itself to two major issues, or problems, in this market area.

A. To gain and maintain a significant market share in major crop areas.

B. To develop and preserve to the greatest degree possible a proprietary position, or franchise, in the market place.

There are obvious limitations on the capability to accurately forecast business activity five years hence. This is especially true in the area of agricultural chemicals where changing technology and governmental control are prevalent.

\* \* \*

[4]

**III. PROBLEM DEFINITION.**

There are two key issues which will have a major effect on the conduct of the Agricultural Division's business in the corn/soybean herbicide market. The planning strategies set forth here are designed to deal with these issues.

**A. Market Share.**

The market for corn/soybean herbicides is rapidly nearing saturation as more and more farmers regularly

include them as a production input. At present, approximately 65% of all planted acreage is treated with pre-emergent herbicide. It is felt that market saturation will be reached when treated acres represent 75-80% of planted acres. Beyond this point any share of new business must come from competitive products and very likely at lower prices and higher promotion costs.

For this reason it is imperative that the Agricultural Division set specific market share goals for each market segment and then direct all resources toward economic attainment of these goals. The sooner a significant market share can be established, the easier it will be to sustain and the more difficult it will be for competition to subsequently attack.

#### B. Proprietorship.

The rapid growth of the corn/soybean pre-emergent herbicide market has been due in large part to the development of a few highly selective compounds. These compounds are the patented property of a handful of large companies marketing agricultural chemicals. The proprietary nature of these compounds and their varying levels of activity and selectivity has resulted in a relatively stable market with respect to price. Product vs. product competitive activity has focused primarily on performance aspects rather than price.

The first significant patents in this area expire in 1975. As expiration dates draw near, there will be increasing activity on the part of new companies wanting to enter the market. This will undoubtedly be done with carbon copy products offered at low prices.

The challenge to the Agricultural Division is to strengthen its market franchise and manufacturing position to the point where it can still command an important share of the market and maintain an attractive profit.

[28]

## 4. Premises relating to herbicide performance:

a. Lasso is the best grass control chemical on both corn and soybeans.

b. Atrazine is the best broadleaf component for corn.

c. Lasso combinations with atrazine (corn) and Lorox or dinitro (soybeans) corn are the best all-purpose herbicide mixtures.

d. The Lasso/amiben combination on soybeans has a high performance rating but is not likely to become a widespread application because of the high cost of amiben.

e. Special weed problems such as found in the Delta region will demand unusual treatment. Lasso may not be the best competitor in this area.

f. Neither Lasso nor Ramrod have practical utility as overtreatments although some product may be applied this way.

[29]

## G. Competition.

1. Competition for the herbicide-treated acreage on corn and soybeans comes from a relatively few products manufactured and sold by large chemical companies.

a. J. R. Geigy has long enjoyed the major share of the corn market. See Figure 10, Page 36. The Geigy product mix is almost entirely based on triazine chemistry and is keyed largely to Aatrex brand of atrazine. The atrazine patent expires in June, 1976.

Atrazine is a highly effective broadleaf herbicide and is quite safe on corn. Its major weakness is its persistence and the fact that high use levels can create carry-

over problems which can damage other crops (such as soybeans) in rotation with corn.

Geigy's strategy has been to sell Aatrex to distributors and dealers alike relying on very strong farmer demand to pull the product through a somewhat disorganized sales distribution system. Sales coverage is excellent. A new form of atrazine, Aatrex 4L, was introduced in 1970. A Ciba-Geigy merger appears imminent.

b. Rohrer Amchem is the seller and patent holder of Amiben (Patent expires December, 1978). Amiben is made by GAF under contract to Rohrer Amchem.

Amiben has been the leading soybean herbicide. See Figure 11, Page 37. Its use has been primarily in the north-central states and very little Amiben is used on Delta soybeans. It can be characterized as a good, though not excellent, herbicide. It is effective on both some grasses and some broadleaf weeds but is not outstanding on anything. It is generally safe on soybeans although some stunting is recognized as an occasional problem.

Amchem has relied on strong academic support to develop Amiben sales. Distribution has been through typical distributor agreements. Amchem maintains effective sales coverage, but, historically, sales programs have not been particularly aggressive.

[30]

c. Elanco division of Eli Lilly produces Treflan. Major Treflan sales are divided between cotton and soybeans. Treflan is also cleared for and used in numerous other crops in smaller volume. Starting in 1965, Elanco has done an exceptionally fine job of promoting Treflan, first in the Delta, and more recently in the Midwest.

Treflan is primarily a grass killer and must be incorporated preplant in order to be effective. It is a low-

cost product at effective use rates because of its very high unit activity. (On light soils, rates are as low as one pint per acre—0.5 pounds of active ingredient broadcast.)

A potential weakness, in some areas, is the need for incorporation. Treflan also has very limited broadleaf activity. There is a small problem with carryover.

Elanco has used imaginative promotion and programs to sell Treflan in the face of reluctant academic support. Initially fair traded, Treflan is now sold to both distributors and dealers. The Treflan patent expires June, 1983.

d. DuPont sells linuron under the trade name, Lorox. It is a substituted urea of a family similar to other DuPont herbicides. It is made by DuPont under exclusive license from Hoechst whose patent expires February, 1980.

Lorox is effective against some grasses and broadleaf weeds. Its strength tends to be more against the broadleaves. It is marginal in safety especially on light soils. Lorox has a high rate sensitivity to organic matter and high rates needed on high organic soils are uneconomic. Lorox can be used on both soybeans and corn, however safety on corn is so marginal that current recommendations specify use in mixtures with atrazine only.

DuPont fair trades Lorox. Sales are through a limited distributor network. Sales growth has been steady but not spectacular. (Figure 11.) Recent studies indicate that DuPont hopes to expand the sales of linuron through use in packaged mixtures such as daethal-linuron, and amiben-linuron.

[31]

e. Stauffer introduced Sutan in 1969. It is a product of the carbamate family. The patent expires November, 1976.

Sutan is a grass killer with a control spectrum similar to Lasso. However, it must be incorporated preplant. The major weakness in its use seems to be a result of non-uniform incorporation techniques.

Stauffer fair trades Sutan. Promotion has been aggressive, however, field sales strength has not been adequate to obtain a highly significant market penetration.

f. New products which are of potential significance are:

(1) Shell-Bladex—A new triazine for use on corn. Shell has been marketing Planavin in the Delta as a poor runner-up to Treflan. They are likely to end up in the same role in the Midwest with Bladex vs. Aatrex. A potential strength for Bladex which must be considered is that it is reported not to have as serious a carryover problem as atrazine.

(2) BASF-Basamaize—An analog of Ramrod which BASF could move into the Midwest as a grass killer in competition with Lasso and Ramrod. BASF marketing capabilities in the United States are untested.

(3) Chemagro-Bay 94337—A potential new soybean herbicide with outstanding broadleaf control. It has marginal safety. It could be effectively marketed by Chemagro's existing sales organization in the Delta.

\* \* \*

[33]

f. The cost of introducing a new product into this consumer market will discourage lesser companies than Shell, BASF, and Chemagro from entering.

Smaller competitors will probably seek ways to market through private labeling a product for the larger farm supply cooperatives. Efforts in this area will increase as patents expire on the major products discussed here.

3. In the preparation of this report consideration was given to the possibility of trading or selling Ramrod and/or Lasso technical to a number of competitors.

In consideration of this possibility, the following premises have been influential in determining the preferred course of action:

a. Following propachlor patent expiration in 1975, a strong proprietary position with alachlor will be of value as opposed to facing wide-spread use of propachlor and subsequent pricing pressures.

Conclusion: Phase out Ramrod; push Lasso.

b. Monsanto's strength over the long term is grass control. While this will not be an exclusive strong point (Sutan, Basamaize) it is one feature that Monsanto can dominate and capitalize on.

Conclusion: Lasso is the best product available for all-around grass control and should be pushed into the market as quickly as possible.

c. Broadpectrum weed control can be obtained in all crops in spray through the use of herbicide mixtures.

Conclusion: Tank mixing will increase and Lasso will be emphasized as the universal grass component for tank mixes.



d. Monsanto can, and should, continue to dominate the market for granular herbicides on corn in spite of potential competition from Basamaize and mixtures.

Conclusion: Clear and sell Lasso/atrazine granules as soon as possible.

\* \* \*

[41]

# I. Pricing.

1. The wide variability of performance between herbicides, coupled with the fact that all major herbicides are proprietary with a single producer-seller has resulted in a high degree of price stability at the manufacturer's level. Some price performance relationships exist between Lasso 10G and Amiben 10G.

2. Present broadcast applied product costs of about \$5 per acre provide adequate return to be of interest to the farmer. These prices have held steady or decreased slightly over recent years. At the same time that product costs have been steady, the corn grower has spent more money per acre for weed control as he has switched from 2,4-D post treatment to the more expensive pre-emergent herbicides. See Figure 12, Page 42.

3. Price margins between farmer-dealer and dealer-distributor have not generally followed the manufacturer's recommendations. These margins are responsive to supply-demand relationships and depend also on the individual manufacturer's distribution philosophy. Stauffer, DuPont, and Elanco have sold on a Fair Trade policy. Elanco dropped Fair Trade in about 1968. Typically, both distributor and dealer seem willing to operate on a margin of about 10%. Typical margins and cost relationships are shown in Table 8, Page 43.

#### 4. Premises relating to pricing.

a. Beginning in 1972-1973, various strategies will be put into effect by manufacturers facing a loss of proprietary status (patent expiration). Monsanto will be one of these. The strategy will be directed toward gradually reducing margins to the point where product manufacturing and promotion costs will deter all but the most aggressive competitors from entering the market with similar products. A further discussion of Monsanto pricing strategies begins on Page 77.

b. A "price war", as such, will not occur between manufacturers prior to 1975 because producers will become dependent upon one another and product mixtures. Rather than a "price war" there will be a general industry price adjustment to bring margins in line with a typical technical commodity. (e.g. aerosol propellants).

\* \* \*

[44]

c. In order to forestall competition from offering technical product or formulation to co-ops and other major farm supply organizations, some producers (Stauffer, Amchem, Geigy) may consider private label production prior to patent expiration. It is considered unlikely that any move will be made in this direction prior to 1975.

d. Some inter-product price adjustments may occur. For instance, a reduction in Lasso granules to make them competitive with Ramrod granules could possibly bring about a similar reduction in Amiben granules. Also, continued penetration by Trellan into the heavy soil soybean areas may justify a reduction in Lasso EC prices.

**PLAINTIFF'S EXHIBIT 196**

MONSANTO COMPANY  
3158 Des Plaines Avenue  
Des Plaines, Illinois 60018  
Chicago (312) 774-7400  
Des Plaines (312) 296-6688  
October 31, 1967

Re-issued do to error  
10-30-67, see change  
in quantity pages 2 & 3

Sprayrite Service Corporation  
10216 North Second Street  
Rockford, Illinois 61111

Gentlemen:

Monsanto Company is pleased to announce that Sprayrite Service Corporation has met the qualifications for appointment as a Formulated Pesticide Product(s) Distributor and encloses for your signature and execution a new Distributor Agreement.

Before executing the enclosed Distributor Agreement, please note the following:

1. The Agreement cancels and supersedes all existing agreements covering the distribution and sale of all products listed as Goods.
2. The Agreement defines your area of primary responsibility for distribution of Monsanto's Goods.
3. The Agreement is effective September 1, 1967 and terminates August 31, 1968. It is not an Evergreen Agreement.

In future annual reviews to determine the qualification for appointment of Formulated Pesticide Product(s) Distributors, Monsanto will use a number of criteria to evaluate each Distributor, including:

1. Is the Distributor's primary activity the solicitation and distribution of agricultural chemical products to *dealers*?

2. Is the Distributor capable of financing, warehousing and distributing large quantities of Monsanto formulated pesticide products in a short period of time?

3. Is the Distributor willing and capable of assisting Monsanto in solving special logistics problems?

4. Is the Distributor willing and capable of carrying out Monsanto's technical programs at both the Dealer and Farmer levels with properly trained technical personnel?

5. Can the Distributor be expected to show reasonable growth from year to year? (10-20% per year)

6. Can the Distributor be expected to exploit fully the potential markets for the Goods in the Distributor's area of primary responsibility?

In addition to the criteria applying to the evaluation qualifications and appointment of a Distributor to sell Monsanto Formulated Pesticide Product(s), supplemental criteria are considered for a specific product or products. During the term of the enclosed Agreement, Monsanto expects all of its Midwest Area distributors of Randox and Randox T (liquid and granular), and Ramrod (granular or wettable powder) to attain or exceed both of the following minimums:

1. Purchase a minimum of 750,000 pounds of 20% granular equivalent.

2. Exceed 1967 purchases of these products by ten percent (10%) on a 20% granular equivalent basis.

In computing 20% granular equivalent volume, the following conversion table is used:

<u>ONE POUND OF</u>	<u>20% GRANULAR EQUIVALENT</u>
Randox G, Randox T G, Ramrod G	1 lb.
Randox L, Randox T L	20 lbs.
Ramrod W. P.	3.25 lbs.

In order to assist you, we have calculated your 1967 granular equivalent base.

A-61

	<u>1967 NET PURCHASES</u>	<u>POUNDS OF 20% GRANULAR EQUIVALENT</u>
Radox L	2,000 gals.	40,000 lbs.
Radox G	486,000 lbs.	486,000 lbs.
Radox T L	0 gals.	0 lbs.
Radox T G	26,000 lbs.	26,000 lbs.
Ramrod W. P.	80,000 lbs.	260,000 lbs.
Ramrod G	680,000 lbs.	680,000 lbs.
	<b>TOTAL</b>	<b>1,492,000 lbs.</b>

Granular Equivalent Base

Monsanto's 1968 minimum goal for Sprayrite Service Corporation is 1,641,200 lbs. ( $1,492,000 + (10\% \times 1,492,000)$ ).

Also enclosed is the Radox, Radox T, and Ramrod Distributor Price and Policy for the Midwest Area.

Please review carefully the contents of this letter, as well as the enclosed Distributor Agreement, and Distributor Price and Policy and note the important price and policy changes which have been made in this product line.

If you desire to be our Distributor, please sign and return the original and all copies of the Distributor Agreement in the enclosed envelope within ten (10) days of receipt. We will then execute the Agreement and return a copy to you.

Sincerely,

Donald R. Fischer  
Product Sales Director

DRF/js  
Encls.

/s/ WILLIAM R. BONE  
William R. Bone  
District Manager

Confirmed  
/s/ DON YAPP PRES.  
Don Yapp

A-62

**PLAINTIFF'S EXHIBIT 202**

From the desk of  
WILLIAM R. BONE

*to Don Yaggo*

MONSANTO COMPANY  
AGRICULTURAL DIVISION

800 No. Lindbergh Boulevard  
St. Louis, Missouri 63168  
(314) OXford 4-1000

*1/8 season*

Effective Date: 11/27/67

Supersedes Date: New Issue

FORMULATED PESTICIDE PRODUCTS (FPP)

DEALER PRICE AND POLICY

MIDWEST AREA

Pertains to Monsanto Formulated Pesticide Products (FPP) Dealers who have been appointed for the 1968 season to serve Monsanto needs in the Midwest area.

MIDWEST AREA includes the following Monsanto Sales Districts: Fremont, Des Moines, Chicago, St. Louis, Indianapolis and Cincinnati (see attached map).

I. **TERMS:** 3% cash discount if paid by the 20th of the month following date of shipment. Net due 20th of the second month following date of shipment. 3/4 of 1% service charge will be applied to past due balances.

II. **PRICE:** (\$/lb. or \$/gal.) Delivered by common carrier to dealer destination, single shipment, or F.O.B. designated Monsanto warehouse. Minimum order 1,000 lbs. (1 gallon of liquid weighs 10 lbs.). See Page 4 for discounts on the following products.

	FORMULA- TION	PACKAGE SIZE	BASE DEALER PRICE	SUG- GESTED RETAIL PRICE
Avadex	4# DDTC/gal.	5 gal. can	13.30	14.30
Avadex Gr.	10% DDTC	50 lb. bag	.37	.40
Avadex SW	- - - - -	NOT SOLD	- - - - -	- - - - -
Far-Go	4# TDTC/gal.	5 gal. can	13.00	14.00
Lambase	- - - - -	NOT SOLD	- - - - -	- - - - -
Niran M-4	4# methyl para- thion/gal.	5 gal. can	PRICE AVAILABLE BY MARCH 1, 1968	

## A-64

	FORMULA- TION	PACKAGE SIZE	BASE DEALER PRICE	SUG- GESTED RETAIL PRICE
Niran 6-3	6# ethyl and 3# methyl parathion per gal.	55 gal. drum 5 gal. can 1 gal. can	8.10 8.35 9.05	11.05 11.35 12.00
Niran 10-G	10% ethyl parathion granules	50 lb. bag	.14	.16
Niran 10-10	10% ethyl parathion and 10% aldrin	50 lb. bag	.25	.23
Ramrod Gr.	20% gran.	50 lb. bag	.50	.54
Ramrod WP	65% WP	50 lb. bag	1.62	1.75
Randox Liq.	4# CDAA/gal.	5 gal. can	8.80	9.40
Randox Gran.	20% CDAA	50 lb. bag	.47	.50
Randox T Liquid*	3.1# CDAA 7.3# TCBC/gal.	5 gal. can	10.60	11.20
Randox T Granular*	11.7% CDAA 23.3% TCDC	50 lb. bag	.47	.50
Eagac	- - - - -	NOT SOLD	- - - - -	- - - - -
Vegadex Liquid	4# CDEC/gal.	30 gal. drum	10.10	12.25
	Liquid	5 gal. can	10.45	12.60
		1 gal. jugs (4/case)	11.00	13.20
Vegedex Granular	20% CDEC Granule	50 lb. bag	.55	.64
Wallop Granular	8.3% Ramrod and 10% ethyl parathion	50 lb. bag	.36	.39

\* Geographic Product Availability—Randox T Granules and Randox T Liquid are cleared for sale and are available in the following MIDWEST AREA states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota and Wisconsin.



**PLAINTIFF'S EXHIBIT 233**

**ASSOCIATED PRODUCERS, INC.**

29 E. Indiana Avenue  
Saint Paul, Minnesota 55107  
Phone: 222-1868

1 October, 1968

**TODAY IN AGRIBUSINESS**

Just a lot of people are shaken, but good. This new sensation may persist for some time, affecting some of course much more than others. The biggest headache is uncontrolled overproduction. This has frequently come from long-time large scale mismanagement, with too many of the "biggs" wanting to be still bigger and getting on every "bandwagon" that came in sight. Most of my customers would say, it would not be so bad if the effect of their battling could be limited to just the "biggs", but there just isn't a chance. The reaction is soon spread like the dropping of a boulder from great height into the center of a small lake, causing a huge disruptive wavelike action on the entire shoreline.

Since farmers and other business men connected with agriculture in numerous ways cannot avoid these adverse reactions, the only practical course for most is to "steer the course—stay with the ship" and determine to use all possible ingenuity and sane effort to outride the storm.

Some are already recognizing that in order to facilitate the accomplishment of this objective different approaches or policies than those of the recent past are a *must*. One such firm is Monsanto Co., at least as to the sales management procedures being applied to their agricultural chemicals (herbicides and insecticides). Most of our customers were disenchanted by the obviously intolerable developments during the past couple of years, not only with Monsanto's products as merchandise, but with others as well.

Monsanto, now recognizing the absolute necessity of getting the "market place in order" with regard to their entire

line of agriculture chemicals, is determined to do what it takes to rectify the situation from now on. In other words, Monsanto's 1969 program is aimed at regaining distributor and dealer confidence through more attentive management. They have too much at stake to permit "drift" or any lack of able management to deter the regaining of their proper stature in the eyes of the trade.

Because Associated Producers, Inc. will again be a distributor for Monsanto and because we have been given the program story as available to date, we feel it is to the competitive advantage of our dealer customers to understand the planned program as much and as soon as possible. In brief, it includes the following plus the details as to price and terms, *including rebilling of up to 25% of carryover on early orders* as set out in the enclosed. First of all, the Monsanto retail fertilizer plants scattered around the country *will not* in any case sell to retail dealers. Secondly, while the number of *jobbers is cut to about 1/3* of the number active last year, and while Monsanto representatives may take dealer orders if distributors are not actively servicing a potential retail market, every effort will be made to maintain a minimum market price level.

In other words, we are assured that Monsanto's company-owned outlets will not retail at less than their suggested retail price to the trade as a whole. Furthermore, those of us on the distributor level are not likely to deviate downward on price to anyone as the idea is implied that doing this possibly could discolor the outlook for continuity as one of the approved distributors during the future upcoming seasons. So, none interested in the retention of this arrangement is likely to risk being deleted from this customer service opportunity. Also, as far as the national accounts are concerned, they are sure to recognize the desirability of retaining Monsanto's favor on a continuing basis by respecting the wisdom of participating in the suggested program in a manner assuring order on the retail level "playground" throughout the entire country. It is elementary that har-

mony can only come from following the rules of the game and that in case of dispute, the decision of the umpire is final.

Besides the above comforting concepts Monsanto offers, through their expanded personnel in the field, every reasonable effort to very much more extensively than ever before enhance enlightened demand on the part of your customers for a preference for Monsanto's ever-expanding assortment of more dependable yet less expensive weed and insect control methods, techniques and products.

Yes, Monsanto has the capacity to make things happen, and I have been assured that they are going to do so constructively from your and my standpoint. The following are examples of what is available to you, in addition to new, more effective products and ideas for their use, more extensive advertising at the local, regional and national level by all practical media,—

1. These Monsanto fieldmen are to help you and us by creating more helpful influence through vo-ag teachers, county agents, bankers and others.

2. They will also aid in supervising and encouraging local compara-time product test plots.

3. Monsanto will sponsor herbicide clinics throughout your market area for yourself and employees. Since attending these clinics will take time away from your business, Monsanto will pay each manager in attendance a minimum of \$20.00 at the close of the day's clinic plus an additional \$50.00 after delivery of your first truckload of assorted Monsanto products. The way the program sounds to me the growth in farmer interest in Monsanto products will make it possible to greatly increase the number of truckload buyers. An example is the fact that a minimum 24,000 lb. truckload of Ramrod granules is just enough to take care of the requirements of 48 fifty acre corn customers. In due time interested dealers will be notified of the location and dates of the

clinics. Everyone who attends a Monsanto herbicide clinic will receive a diploma certifying his graduation.

4. We, together with Monsanto representatives and yourself, will also sponsor grower meetings. For each of these in which you participate you will be paid the sum of \$50.00 by Monsanto, assuming:

a. A minimum of one-half hour is devoted to the promotion of Monsanto products to a minimum of 20 growers or producers of 6,000 acres of corn and soybeans be present at the meeting.

b. The dealer and/or our representative presenting the meeting will have had to be a Monsanto clinic graduate.

c. A list of growers by name, address, and approximate acreage of corn and soybeans planned for the upcoming year will be required. A form or cards for reporting this information will be provided.

5. Each distributor is allowed but a limited number of these grower meetings, all of which will be held during the winter and early spring. Of course, choice as to dates for your meeting will be subject to a first come first choice basis. The sooner we know your preference as to the time you would like a meeting held for you, the better. At these meetings other than Monsanto products may be discussed also, but it will be good business to think in terms of allowing Monsanto a top exposure. Monsanto will furnish invitation cards, ad mats for local publicity, and meeting registration cards. The presentation material, slide scripts, and banners too will be furnished by Monsanto on request.

Monsanto is not entering into this very attractive and expensive program without the idea that it will create more profit for themselves as well as for those of us who participate in behalf of making the entire program work. They are thinking about the long term, and I am sure you and I prefer such a viewpoint as to our own customer relations also.

A-69

Monsanto has changed for the better in a big way, so let us participate together in '69. The enclosed card is for your convenience in getting preferred attention as to the date of your grower meeting.

Sincerely yours,

/s/ FRED H. BAILEY

Fred H. Bailey

P.S. Besides making available at no cost a supply of pertinent product mailers and other sales help materials, Monsanto will pay the total cost of local ads based on verification of same, up to an amount equal to the equivalent of 50¢ per cwt. lbs. of granular product purchased. Thus, on 200 50 lb. bags you could spend up to \$50.00 for local advertising at Monsanto's expense. This can be for either *radio* or *newspaper* advertising with Monsanto furnishing the mats or script.

**PLAINTIFF'S EXHIBIT 279**

**MONSANTO**

FROM: Tom Dille  
LOCATION: Muscatine  
DATE: August 7, 1969  
SUBJECT: PROSPECTIVE DISTRIBUTOR REVIEW  
Reference: Cole Chemical Supply Company  
To: Messrs. R. M. Schweikher  
R. E. Baynard  
A. F. Davis  
R. E. Blackwelder

The attached questionnaire is to serve as my introduction of Cole Chemical Supply Company of Rockford, Illinois into consideration for appointment as a Monsanto distributor for 1970.

Cole Chemical is primarily an agricultural chemicals marketing organization. There are actually three parts to this organization; agricultural pesticides, chemical application equipment, and animal health products and supplies. There are three districts, each with a district manager, sales force, warehouse and office. Each district handles products for all sections of the business; that is, they sell pesticides, equipment, and animal health products and supplies. One exception to this is the Springfield district which is handling only pesticides and equipment. The three districts break out basically as Wisconsin, northern Illinois and southern Illinois.

Jim Sheldon, the president, has set up the business to stay and grow over a long range period of time. They are not in the business as a short term venture. They are studying and analyzing the market in which they operate and then designing a marketing plan that will supply and satisfy that particular market.

They have about 700 retail outlets in which they have a significant influence in Illinois and Wisconsin. The personnel is some of the better technically-trained people in this field. This would give them the ability to do a fine job in exploiting the market potential for Monsanto products.

With their business based on service and the ideally located warehouses, they would be able to help in solving Monsanto's logistics problems both in early take and the LTL in-season shipments.

They would be anxious to participate in the advertising and promotional programs as they do a great deal of this at present as part of the services they offer their resellers.

They recognize that in their market place they must have Monsanto products to properly service their accounts. They sold our products as a distributor this year more because they had to in order to be a complete distributor of corn and soybean herbicides.

There is some question as to the financial strength of the organization, but Mr. Sheldon has expressed his willingness to meet and work with our credit department in whatever manner would be necessary.

Cole Chemicals strength is primarily in northern Illinois and Wisconsin. My greatest need is in northern Illinois, where we missed some sales this year because there was no product on the shelves. They could help in strengthening the distribution in this market without an adverse effect on our other distributors.

In Wisconsin Cole is very strong and at the same time our distribution there is relatively strong with Hopkins and E-Z Flo. However, I believe with the growth potential in the state and our expansion of the market area, Cole can help us attain our goals without disruption of our presently established system.

A-72

I recommend that if Cole Chemical Supply Company meets the criteria for selecting distributors they be appointed as a distributor in 1970.

/s/ TOM DILLE

---

Tom Dille

/kn  
attachment

cc: D. E. Seitz  
R. G. Wilson



**PLAINTIFF'S EXHIBIT 309**  
**1970 CORN/SOYBEAN HERBICIDES DISTRIBUTOR/DEALER MARGINS**  
**FARM USE COSTS**

Distrib. Unit Cost All Disc.	Product	Silt Loam 3% Rate	Distrib. Price Per Acre/All Discounts	Distrib. Margin at Suggest Dealer	Distrib. Margin at Average Dealer	Acre Distrib. Gross Profit at Avg. Dealer	Average Price/ Acre	Dealer Margin at Suggest Retail	Dealer Margin at Average Retail	Dealer Gross Profit at Average Retail	Farmer Price/ Acre Suggest List	Farmer Price/ Acre Average	Distrib. Dealer Profit at Avg. 1/2 Acre	Dist./ Dealer % G.P. to Acre Farm Price
<b><u>CORN HERBICIDES</u></b>														
1.83	Aatrex 80W .....	(2.5 Lbs.)	4.60	25.1%	6.2%	0.30	4.90	34 %	2.5%	0.125	7.12	5.00	0.425	6 %
6.98	Sutan 6E .....	(2/3 G)	4.66	20.5%	20.5%	1.32	5.98	11.5%	11.5%	0.79	6.77	6.77	2.11	31 %
.717	Sutan/atrazine .....	(11 Lbs.)	7.85	17.6%	17.6%	1.65	9.50	13.0%	13.0%	1.50	11.00	11.00	3.15	34 %
.234	Knoxweed G .....	(20 Lbs.)	4.68	20.5%	20.5%	1.12	5.80	11.9%	11.9%	.95	6.70	6.70	2.02	14 %
1.206	Londax .....	(8 Lbs.)	9.65	21.0%	21.0%	2.55	12.20	12.0%	12.0%	1.70	13.90	13.90	4.25	30.5%
10.33	Lasso EC .....	(2.5 Qt.)	6.45	14.0%	12.0%	.90	7.35	13.0%	9.7%	.80	8.45	8.15	1.70	21 %
.40	Lasso 10G .....	(25 Lbs.)	10.00	15.2%	12.0%	1.20	11.20	15.0%	10.5%	1.30	13.25	12.50	2.53	19 %
1.01	Ramrod 65WP .....	(8 Lbs.)	8.08	14.6%	12.0%	1.16	9.20	15.5%	8.0%	1.70	10.90	10.00	2.88	28 %
.38	Ramrod Gran .....	(25 Lbs.)	9.50	13.8%	7.5%	.75	10.25	17.0%	8.4%	.90	12.35	11.20	1.65	14.5%
1.22	Ramrod/Atraz. ....	(7 Lbs.)	8.55	14.0%	9.5%	.90	9.45	15.5%	10.0%	1.05	11.20	10.50	1.95	18.6%
.26	Randex T G .....	(30 Lbs.)	7.80	16.0%	10.4%	.90	8.70	19.5%	12.0%	1.20	10.80	9.90	2.10	21.0%
<b><u>SOYBEAN HERBICIDES</u></b>														
10.385	Amiben G .....	(25 Lbs.)	9.65	18.0%	10.5%	1.10	10.75	18.0%	8.0%	0.95	13.10	11.70	2.05	17.5%
6.78	Amiben L .....	(1 1/2 G)	8.45	19.5%	15.5%	1.35	10.00	14.0%	10.5%	1.20	11.60	11.20	2.55	22.7%
19.66	Treflan L .....	(1/4 Qt.)	3.68	20.5%	5.1%	0.19	3.87	24.5%	6.0%	0.25	5.12	4.12	0.44	8.6%
11.86	Vernam 6E .....	(5/12 G)	4.92	25.0%	25 %	1.62	6.55	12 %	12.0%	9.90	7.45	7.45	2.52	34.2%
.374	Vernam G .....	(25 Lbs.)	9.35	24.5%	24.5%	3.05	12.40	11.5%	11.5%	1.60	14.00	14.00	4.65	33.2%
10.23	Lasso 4 EC .....	(2 1/4 Qt.)	6.45	14.0%	10.5%	0.75	7.30	14.8%	11.5%	0.95	8.45	8.15	1.70	20.9%
.40	Lasso Gran .....	(25 Lbs.)	10.00	16.0%	13.0%	1.80	11.50	13.0%	8.0%	1.00	13.25	12.50	2.50	20.0%
1.978	Loxaz .....	(3 Lbs.)	5.95	22.0%	22.0%	1.70	7.65	13.5%	12.5%	1.20	8.85	8.85	2.90	32.5%

# COMPARISON OF 1970 COMPETITION PRICE INCENTIVE PROGRAMS

Company	R.O. Discount Period	R.O. Discount	Quantity Requirement	Quantity Discount	Terms Discount	Special Other Discounts or Offers	Total Possible Discounts	Margin Request Based on Dist. Only	Margin Request Based on All	Credit Ratio	Ship Date Requirement	Invoice Date	Payment Date
Galaxy	Prior 9-30 To 12-15	4% 3%	None	2.5% on 50,000 pounds	1.5% Mo. up to 6%	None	12.5%	14.5% Maximum	25% Maximum	20%	4th Quarter January Seller option	With order Ship	1/4 May 30 1/4 June 30 1/4 July 30
Amchem	10-1 9-30	6% (5% Mo. Oct. to Dec.) (Dec.—1.5%/Jan. .5%)	None	2% on 24,000 pounds TL	2.5% March 1	Bonus 1% to 2% and Inv. Insure to Jan. 1	11.5% to 12.5%	9%	18.4% to 20.4%	15%	None except storage allowance variable	With order dated 4-1	Not 5-1
Quasifer	Prior Feb. 1	7%	None	4.5% on 24,000 pounds	5% April 30	None	11.0%	11%	20.5%	None	Seller Option between Jan. 1-March 1	With order Ship	April 30 or Not 31 after 4-1
Manco	10-15 to 9-30	6% after Quantity Discount	None	2% on 24,000 pounds	2%-4% dyn. form 1st Mo. following delivery	2% or more on formula & active ingred.	13.0% or more	13.5%	20%	25%	Seller Option and when location	With order Ship	60 days after 1st Mo. follow delivery
Monomate	1-1 to 9-30	2.4% in Jan.—1.5% in Feb.	T/L only (24,000)	3%	3% March 10	Distributor Program value .50%	7.5%	7.5%	14%	25%	1-1 to 1-31 3-1 to 9-30	With order Ship	May 30
CalPost	1-1 to 9-30	No Term	None	4.5%	2.5%—10 4%	None	8.5%	15.5%	22.5%	25%	1-1 to 1-31 1-31 to 9-30 9-31 to 12-31	With order Ship	May 30

A-74

# 1970 Distributor Maximum Discount NET GROSS PROFITABILITY COMPARISON

Particular Book \$25,000 takes any amount	MINUS COSTS				Distributor Gross Profit At Reg. Base	Total Gross MC.	Percent to Dollar	PLUS COSTS			Total Gross FC	Percent to Dollar	Net Gross Profit	Percent to Dollar
	Maximum H.Q. Discount	Maximum Quantity Discount	Maximum Terms Discount	Other Special Discount				To May 30 1% per Month Penalty	To April 30 1% per Month Workman	10% for Carry over Inventory Beyond Cred. Retail 25%				
Wiley .....	500	100	1200	0	3840	4840	34.9%	1000	1400	100	2800	12.5%	3840	12.5%
Amesbury...	1200	400	500	300	1900	4200	31.2%	800	1400	200	2300	11.0%	3000	10.0%
Shaffer ...	1400	840	1000	0	2300	5440	37.2%	200	800	500	1300	2.8%	4000	20.1%
Blanco ....	1100	400	400	400	2720	5100	25.4%	400	200	0	600	2.0%	4300	22.9%
Monahan ...	400	100	600	190*	1500	2680	14.7%	480	800	0	1080	5.3%	1870	6.4%
DuPont ...	—	900	700	—	3100	4750	22.7%	800	670	0	1470	7.4%	3280	14.4%

\*Based upon average Distribution composition percent volume.

**PLAINTIFF'S EXHIBIT 325****MONSANTO**

<b>FROM:</b>	Tom Dille	cc: D. E. Seitz
<b>LOCATION:</b>	Muscatine	J. E. Triplett
<b>DATE:</b>	November 16, 1970	R. Robinson
<b>SUBJECT:</b>	Distributor Marketing	M. A. Flynn
	Presentation	R. W. Fulwider
	W. R. GRACE—Henry	G. E. Uecker
		P. G. Sykes
<b>TO:</b>	Jack Zorn	R. L. Leach
	R. E. Blackwelder	W. R. Grace file
	R. M. Schweikher	
	John Mathias	

The presentation of our 1971 Marketing Program was made to E. Graham Chandler, the Pesticide Products Manager for the Henry Region of W. R. Grace.

Presentation was well received and Mr. Chandler indicated he would comply with the requests we made. He will again handle all orders for this region and, along with the Regional Manager, Mr. Ben Anderson, maintain pricing control on pesticides at this level.

A date was set with the Henry District for presentation of the Distributor Marketing School for December 10th for all Territory Managers, their district managers and sales managers. Bob Blackwelder will be doing the same with the Decatur District. His contact man will be Herb Bichnell in the Decatur office.

They are sending out a letter announcing the dealer marketing schools in Illinois and asking all their outlets to attend. Copy of letter will be sent to this office.

The other information we have requested under the marketing strategy section of our program will be ready when we hold the marketing school.

Attached are copies of the organization of the Henry and Decatur districts. I will obtain the regional organization chart

A-77

at a future date, or maybe Jack Zorn already has same and could forward a copy to me.

/s/

TOM

Tom Dille

/kn

**PLAINTIFF'S EXHIBIT 344**

Robert R. Lane—Kansas City District Office

April 8, 1971

Pricing and Distributor Candidates

All Salesmen

**PLEASE READ AND DESTROY**

Per our recent District sales meeting, as a reminder, I urge all of you to be aware of the legal implications of getting involved on the subject of prices. We can only go so far and do only so much. The key to success is simply the people involved *must* talk to each other, not us.

If pricing problems develop, listen and get all the details. Bring the problem to my attention, but make no promises, boasts, etc. to dealer or Distributor salesman.

If someone asks for Distributorship in "72" avoid subject of requirements, policy, etc. Simply refer candidate to me. I will talk to the candidates. Please no promises like "I'll see what I can do" etc.

Robert R. Lane

RRL/cc

**AGAIN, PLEASE DESTROY ONCE YOU  
UNDERSTAND THE CONTENT OF THIS MEMO.**

**PLAINTIFF'S EXHIBIT 348**

**MONSANTO**

[1]

FROM: D. E. Seitz  
LOCATION: St. Louis General Offices  
DATE: April 28, 1971  
SUBJECT: Summary of April Meeting

cc: Messrs. D. R. Fischer  
R. M. Schweikher  
J. P. Mathias  
V. T. Robinson  
J. A. Ross

TO: Messrs. M. S. Albertson  
R. E. Blackwelder  
T. M. Dille  
E. E. Jordan  
R. R. Lane  
N. A. Sinclair

Following is an outline of the various subjects discussed at our recent meeting, April 26 and 27. I have noted all of the agreed-to dates, conclusions, and future action for the topics covered.

\* \* \*

[3]

**VI. Reseller and Distributor Compensation**

A. Reseller Compensation—The order the dealer file folders will be processed this year for payment is as follows:

1. Each salesman will have a file folder completed for each dealer participating in our program with all respective parts verified and turned into the District Office by September 1, 1971.

All salesmen must write their territory number on the advertising participation form sent in with the ver-



ification of advertising. Neale Sinclair agreed to send the cover sheet he used last year to all District Managers for their possible use.

2. D. E. Seitz will provide a log sheet to keep dealer program compensation records by salesman by district. These log sheets will be available by June 1, 1971.

3. The completed log sheets will be sent to D. Seitz by September 15, 1971 for checks to be issued.

4. Hopefully, the checks for each dealer outlet will be returned to the salesman through the District Managers for personal delivery to each dealer.

It was suggested that the Merchandising Supervisor write a letter to all retail outlets of national accounts and tell each outlet how many dollars he earned in our Dealer Marketing Program and for what function.

B. Distributor Compensation—We agreed to begin handling each distributor's advertising allowance as quickly as possible which would be July 1, 1971 at the latest. The following things will be required of each distributor:

1. Proof of performance (affidavits, tear sheets, etc.)
2. Paid invoices for their advertising.
3. Where applicable, a copy of the dealer's (name and location) signed release permitting the distributor to spend his advertising dollars.
4. Salesmen will then be notified of results to assure this part of the program is completed and the distributor is not over paid and we do not pay on the same thing twice.



[4]

VI. Reseller and Distributor Compensation (continued)

B. Distributor Compensation (continued)

The distributors who have signed releases from dealer outlets are: Felco, Cole/Hopkins, Farmland, MFA Oil, Seedkem, Sur-Gro, and Harris-Serum.

The actual payment procedure to be followed for distributor program participation and advertising will be for the account manager to personally deliver the checks to the proper person in each distributorship.

\* \* \*

[5]

XV. Sales Territories

R.M. Schweikher will further discuss this subject individually with each district manager. One piece of information to use on this subject is the individual territory data taken from our Dealer Census. This is all the information we have and we need to see exactly what conglomeration of information we can come up with for each sales territory.

[6]

One of the questions is also whether we really have our people today properly placed in relation to the present market and future potential.

XVI. 1971 Distributor Review Guide

We will use the points covered on this guide to decide on the geographic limitations of present distributors and also to evaluate present and suggested future distributors.

It was agreed that any changes or recommended changes in our distribution system has to be committed to paper with all specifics stated in concise terms for review by our lawyers before anything can be finalized.

All questions to be asked of our present distributors must be taken from all district managers in July so the account manager can get all the questions answered at the distributor review.

XVI. 1971 Distributor Review Guide (continued)

All distributors are to give their sales information (Part II of Program) to the account manager at the time of the review (August 1, 1971).

A list of concerns were formulated to answer on distributor appointments as follows:

<u>Distributor</u>	<u>District Manager</u>	<u>Issue</u>
1. Am. Oil	REB	—Non-support of distr. program
	REB & EEJ	—In-season logistics
	MSA	—Other sales (Minn.)
		—Use chemicals as a lost leader for petroleum products
	TMD	—Price administration (floor price)
2. Am. Fert.	RRL	—Zero participa- tion in all activities
3. Arco	TMD, MSA & REB	—Price discipline
4. Assoc. Prod.	MSA	—Bank Bids
		—Percent reseller sales
		—Sales force (Organization)
5. Boyer Valley	TMD	—Percent reseller sales
6. Brayton	MSA	—Percent other sales (Minn.)
	RRL	—Pricing practices
	TMD & RRL	—Farmer sales
7. Central Soya	REB & TMD	—Program participation
		—Percent reseller sales

XVI. 1971 Distributor Review Guide (continued)

<u>Distributor</u>	<u>District Manager</u>	<u>Issue</u>
8. Cole/Hopkins	REB & TMD	—Program participation —Percent reseller sales activities
9. C.F.S.	RMD, NAS & TMD  MSA	—Lack of leadership from their home offices —Price discipline
[7]		
10. Cypress Supply	REB, RRL & EEJ RRL RRL  RRL & EEJ	—Percent reseller sales —Price discipline —Sales outside primary area —Priority of Monsanto products
11. Desco	EEJ	—Farmer sales
12. E-Z-Flo	REB EEJ	—No activity —Farmer sales, pricing policy O.K.
13. F.S. Services		
14. Farm Bureau Coop	EEJ	—Distributor Program Activity
15. Mich. Farm Bureau	EEJ	—Logistics, Sales priority O.K.
16. Felco		O.K.
17. Fuce		O.K.
18. Farmland	MSA, REB,  & RRL EEJ	—Price administration —Woodbury sales —Percent Reseller sales —Farmer sales, program participation pricing practices
19. FMC		

XVI. 1971 Distributor Review Guide (continued)

<u>Distributor</u>	<u>District Manager</u>	<u>Issue</u>
20. W.R. Grace (Nashville)	REB	O.K. in Kentucky
(Joplin)	RRL	O.K.
(Indiana & Michigan)	EEJ	—Reseller shelves (Indiana) —Distributor Program & Sales ability (organization)
(Henry, Illinois)	TMD	—O.K.
21. Gulf	MSA, REB	—Zero program participation in Ky.
	& RRL	—Logistics
	RRL	—Dealer outlets (shelves)
22. Harris Serum	RRL	—Credit
23. Helena	RRL	—Price practices, Monsanto product priorities
24. Indiana Farm Bureau	EEJ	—Product priorities, stocking shelves
25. Kaiser	REB	—Zero support of Monsanto products and distributor program
26. Kay Dee	NAS	—Sales volume
[8]		
27. Lavery Sprayers		—O.K.
28. MFA Oil	RRL	—Pricing policy
29. Midland		—O.K.
30. Midwest	MSA & RRL	—Percent reseller sales, sales out- side geography (S.D., Minn.)

XVI. 1971 Distributor Review Guide (continued)

<u>Distributor</u>	<u>District Manager</u>	<u>Issue</u>
31. Mid-State	MSA	—Percent reseller sales —Sales outside geographic area
32. Occidental	REB EEJ, REB & TMD	—Creditability —Sales outside primary geography
33. J. M. Schultz	EEJ	—Indiana—No program support or in season shipments.
34. Seedkem	REB	—Credit
35. Smith-Douglass	REB	—Non-support of all programs (Ill.)
36. Sommer Brothers	RRL	—Marketing organization—Ability to stock reseller shelves
37. Sur-Gro		—O.K.
38. Southern States		—O.K.
39. Vistron		—O.K.
40. Wycon		—O.K.
41. Zehr & Co.	EEJ	—Percent reseller sales —Pricing policy
42. Terra	NAS & TMD	—Marketing organization —Farmer dealers

XVII. 1971 Marketing Program Objectives and  
Distributor Criteria

It was agreed that the objectives for the programs and criteria handed out will be the ones we use for 1972.

**XVIII. 1972 Distributor Compensation Program**

**A. Dollar Compensation**

It was agreed that we should definitely put more dollar compensation in our Distributor Program. A minimum of \$.01/lb. of granular equivalent was suggested for compensation.

[9]

**B. Letter of Authorization (Endorsement or Door Opener)**

1. It was suggested that a letter of authorization stating that the distributor has signed a contract to sell Monsanto's corn, soybean and sorghum herbicides, and they have agreed to participate in all parts of Monsanto's Marketing Programs at all levels of management be attached to the contract.

2. R. Schweikher and D. Seitz will prepare a sample letter and send to the District Managers for their inputs, criticisms, etc. so we can have a rough outline by our May Meeting.

**C. Actual Distributor Program Needs**

1. Inventories by location

2. Sales by destination (minimum is by county)

3. Distributor advertising dollar allowance

4. Strategy Agreement—Each distributor will have a custom-designed strategy agreement written by the account manager.

5. Distributor Marketing Schools

a. May start by having one to two key people in each distributorship come to St. Louis to sign a contract and enlist in our 1972 program (may want to mail contract to them in advance).

We would want Monsanto's top management to meet with the distributors. May have a half day of

business and a half day of pleasure. We could have 20-30 people/day for three days and fulfill our needs.

b. We would then go to each distributor as we did this year and talk to all necessary people in each organization.

#### D. Future Action

It was agreed that each District Manager would take the recommended program needs and test each of these needs against their specific situations. The conclusions will be reported and discussed at our May meeting.

It is suggested that each district manager look at the mechanics, verbage, assets, and problems with this proposed program.

**DEFENDANT'S EXHIBIT 38**

**MONSANTO'S 1972 DISTRIBUTOR MARKETING PROGRAM**

Monsanto's 1972 Distributor Marketing Program will be based on distributor sales of Monsanto products to a business that sells 90% of his purchased agricultural chemicals directly to the ultimate consumer.

This program will apply to the following Monsanto herbicides:

Lasso E.C.	Ramrod 65 W.P.
Lasso 10-G	Ramrod/atrazine
Ramrod 20-G	Randex-T G

The maximum total available compensation is equal to \$0.0109/pound or \$1.09/100 pounds granular equivalent based on sales to a business that sells at least 90% of his purchased agricultural chemicals directly to the ultimate consumer. To earn the total available compensation in each part of the program, a distributor must meet all qualifications in each of the four parts of Monsanto's 1972 Distributor Marketing Program by August 31, 1972.

All dollar compensation earned in Monsanto's 1972 Distributor Marketing Program is payable only to the Monsanto distributor earning the compensation by completing the described activities.

**1972 DISTRIBUTOR MARKETING PROGRAM**  
**PART I**

**Distributor Marketing Schools**

A total of \$0.0004 per pound (\$0.04/100 pounds) of granular equivalent based on sales of Monsanto herbicides to a business that sells at least 90% of his purchased agricultural chemicals directly to the ultimate consumer is available



under this part of the program providing the following conditions are met:

1. All distributor personnel involved in *management* and *field sales* must attend (excluding retail outlet managers).
2. Each distributor is responsible for scheduling the meeting for his personnel with the Monsanto field account manager or local Monsanto district manager.
3. The Monsanto school must last a minimum of one-half (1/2) day.
4. Distributor Marketing Schools must be held prior to December 1, 1971.

## 1972 DISTRIBUTOR MARKETING PROGRAM PART II

### Sales Information

A total of \$.0015 per pound (\$.15/100 pounds) of granular equivalent based on sales of Monsanto herbicides to a retailer business that sells at least 90% of his purchased agricultural chemicals directly to the ultimate consumer is available under this part of the program providing the following conditions are met:

1. A distributor must supply Monsanto a detailed report of his total sales on a form furnished by Monsanto to receive compensation under part II of the 1972 Distributor Marketing Program. This report must be submitted to the Monsanto account manager prior to August 1, 1972.
2. A distributor must provide total inventory numbers for his own warehouses by quantities by product by warehouse location prior to August 1, 1972.
  - a. Beginning inventory by product of distributor titled goods (located in distributor warehouse and retailer business).

b. Ending inventory by product of distributor titled goods (located in distributor warehouse and retailer business).

3. A distributor must prepare a summary sheet which gives his total beginning inventory, total purchases for season, and total ending inventory by product prior to August 1, 1972.

All inventories and sales will be verified by the local Monsanto representative. A distributor must provide access for Monsanto representatives to verify sales and inventories. Failure to provide access will result in forfeiture of compensation under Part II of Monsanto's 1972 Distributor Marketing Program.

### 1972 DISTRIBUTOR MARKETING PROGRAM PART III

#### Distributor Early Purchase Program

Additional compensation can be earned by a distributor for purchasing Monsanto products between January 1 and February 29, 1972.

##### First Early Shipment Period

Orders placed prior to December 18, 1971 and shipped during calendar month of January, 1972 will receive \$.006 per pound granular equivalent.

##### Second Early Shipment Period

Orders placed between December 19, 1971 and prior to January 21, 1972 and shipped during calendar month of February, 1972 will receive \$.003 per pound granular equivalent.

Shipments will be verified by Monsanto and compensation will be accumulated and paid to distributor in October, 1972. Detailed qualifications are in Price Sheet Number 71-46.

1972 DISTRIBUTOR MARKETING PROGRAM  
PART IV

Retailer Early Shelf Stocking Program

Additional compensation of \$.003 per pound (\$.30/100 pounds) granular equivalent can be earned by a distributor stocking agricultural businesses that sell at least 90% of their purchased agricultural products directly to the ultimate consumer prior to February 15, 1972.

Conditions of this part of Marketing Program are:

1. Retailers must take physical and titled possession of Monsanto herbicides (Lasso E.C., Lasso 10-G, Ramrod 20-G, Ramrod 65 W.P., Ramrod/atrazine, and Randox T) prior to February 15, 1972.
2. Retailers must notify Monsanto district sales office in writing (forms provided by Monsanto) prior to February 18, 1972 of shipments received.
3. Retailers notifications must contain the following information to retailers for early stocking payment:
  - a. Copy of shipping or billing documents which establish physical movement.
  - b. Quantity of each product purchased.
  - c. Identify business or concern from whom products were purchased.
  - d. Date products were received.
4. Retailer must provide Monsanto local representative access to product for physical verification as needed.
5. The individual Monsanto representative will be the only person to authorize qualification of a retailer under this portion of the program.
6. The distributor compensation will be based on retailer purchases verified by the local Monsanto representatives.

1972 DISTRIBUTOR MARKETING PROGRAM

PART V

Advertising Participation

Monsanto will pay for the promotion of its proprietary herbicides to help distributors maximize their sale in the distributor's market.

Monsanto will reimburse the distributor for the total cost of ads based on verification\* up to an amount equal to the total allowance, as determined according to the rate table below. These rates are based on 5¢/100 pounds of granular equivalent purchased.

\* For verification, distributor must submit all of the following:

1. (a) For newspapers—a tear page of the advertisement.

or

(b) For radio & Television—an affidavit of broadcast from the station and a copy of the Monsanto announcements used.

2. A "paid" statement (invoice) showing total cost of advertising.

This advertising allowance is available to all distributors buying directly from Monsanto. All claims for advertising reimbursement must be submitted to the Monsanto district office serving the distributor.

The following is a list of products included in the program and the allowance earned by the purchase of each:

*Lasso Granules	\$.025/50 lb. bag or \$1.00/ton
*Lasso E.C.	\$.02/gallon
*Ramrod Granules	\$.025/50 lb. bag or \$1.00/ton
*Ramrod W.P.	\$.08/50 lb. carton or \$3.27/ton

1972 DISTRIBUTOR MARKETING PROGRAM

PART V (continued)

\*Ramrod/atrazine W.P. \$.065/50 lb. carton or  
\$2.50/ton

\*Reg. U.S. Patent Office, Monsanto Company

Materials Supplied by Monsanto

For Local Newspaper and Radio—

Monsanto will supply materials necessary for carrying out a local promotional program. Materials will be available directly from Monsanto.

Newspaper Mats and Slicks (Proofs) in 2 sizes:

3 columns by 10 inches

2 columns by 5 inches

Radio Spots—printed script for one-minute and thirty-second product announcements.

Television—Thirty-second and one-minute length filmed TV commercials on Ramrod, Ramrod/atrazine and Lasso.

General Conditions

1. The allowance is available only for Monsanto products listed and purchased from Monsanto between January 1, 1972 and June 30, 1972.

2. No competitive pesticides may appear in advertising for which reimbursement is requested. Distributors who wish to advertise Monsanto pesticides along with other products and services they offer (excluding competitive pesticides) may do so provided reference to Monsanto products is in accordance with the product descriptions appearing in Monsanto-furnished ad mats, slicks, and radio scripts. Monsanto reimbursement will cover only that part of the advertising devoted to Monsanto products.

1972 DISTRIBUTOR MARKETING PROGRAM

PART V (continued)

General Conditions (continued)

3. Advertising to be submitted for reimbursement must be placed in media with published coverage and rate information. No regional magazines, state farm publications or media circulating beyond the distributor's normal marketing radius are eligible for reimbursement within this program.

4. Advertising must be published or broadcast during the period January 1, 1972 to July 1, 1972. Advertising published or broadcast prior to or following this period is not eligible for reimbursement within this program.

5. Requests for reimbursement should be submitted to the distributor's Monsanto district office at any time prior to but not later than August 1, 1972. Any part of the allowance unused by that date shall not be available for reimbursement.

6. No Monsanto personnel or any other person has the right to amend or change any of these terms and conditions without prior approval in writing from Monsanto's Agricultural Advertising Department in St. Louis.

7. This program is offered and in effect for 1972 only.

ALL ADVERTISING MUST BE COMPLETED  
BETWEEN JANUARY 1, 1972 AND JULY 1, 1972

ALL CLAIMS MUST BE SUBMITTED  
BY AUGUST 1, 1972.

## DEFENDANT'S EXHIBIT 190

[1]

LIST OF MONSANTO'S MIDWEST DISTRIBUTORS  
AND THEIR RESPECTIVE AREAS OF PRIMARY  
RESPONSIBILITY

1968 DISTRIBUTORS

MINNESOTA

Agrico  
 Associated Prod.  
 Ayleo  
 Cashman  
 Castle Chem.  
 Chevron  
 FMC Corp.  
 FUCE  
 Farmers Regional  
 Interstate Seed  
 Kay Dee  
 Midland  
     Cooperatives  
 Minnesota Farm  
     Bureau  
 Olin  
 Sexauer  
 Smith-Douglass  
 Thompson-  
     Hayward  
 Woodbury

NEBRASKA

Anderson Feed &  
     Seed  
 Chevron  
 FMC Corp.  
 Farmers Regional  
 Farmland Ind.  
 Kay Dee  
 Miller Chem.

Olin  
 Randolph Fert.  
 Sexauer  
 Terra Chem.  
 Thompson-  
     Hayward  
 Tyson's  
 Woodbury

SOUTH DAKOTA

Chevron  
 FMC Corp.  
 FUCE  
 Farmers Regional  
 Kay Dee  
 Sexauer  
 Thompson-  
     Hayward

ILLINOIS

Agrico  
 Atwood Grain  
 Ayleo  
 Brayton Chem.  
 Central Soya  
 Chevron  
 FMC Corp.  
 F.S. Services  
 Farmers Regional  
 Funk Bros.  
 W. R. Grace & Co.  
 Haskett Fert.

Hamilton Co.  
 Harbrand, Inc.  
 Hub Oil  
 Indian Point  
 Geo. Keller & Son  
 Marquiss Farm  
     Sup.  
 Olin  
 Schaefer Sup.  
 Schultz Seed  
 Seedkem  
 Smith-Douglass  
 Sprayrite  
 Swift Ag. Chem.  
 Thompson-  
     Hayward  
 Trissler Seed  
 Van Horn Hybrids  
 Woodtreating

IOWA

American Off  
 Anderson Feed &  
     Seed  
 Boyer Valley  
     Fert.  
 Brayton Chem.  
 Castle Chemical  
 Chem. Gro Fert.  
 Chevron  
 FMC Corp.

F.S. Services	Midland	Associated
Farmers Regional	Cooperatives	Producers
Coop	Reed Bros.	Castle Chemical Co.
Farmland	Swift Ag. Chem.	E-Z Flow
Industries	Terra Chem.	FMC Corp.
W. R. Grace & Co.	Thompson-	Farmers Union
Gro-Mo-Co.	Hayward	Central
Hamilton Company	Woodbury	F.S. Services
Hopkins Ag. Chem.		Hopkins Ag. Chem.
Kay Dee Feed	<u>WISCONSIN</u>	Midland Coop.
Laverty Sprayers	American Oil	Smith-Douglass

\* \* \*

[5]

1972 DISTRIBUTORS

<u>MINNESOTA</u>	American Oil	U.S.S. Agri Chem.
American	FUCE	<u>ILLINOIS</u>
Cyanamid	Farmers Regional	American
American Oil	Farmland Ind.	Cyanamid
Arco Chemical	Kay Dee Feed	American Oil
Custom Farm	Mid-State Chemical	Arco Chemical
Services	Peavey Company	Brayton Chemical
Farmland	Terra Chemical	Central Soya
Industries	U.S.S. Agri Chem.	Custom Farm
FUCE	<u>NEBRASKA</u>	Services
Farmers Regional	American	Cypress Supply
Kaiser Ag. Chem.	Cyanamid	F. S. Services
Kay Dee Feed	American Oil	Farmland Ind.
Midland	Custom Farm	W. R. Grace & Co.
Cooperatives	Services	Hopkins Ag. Chem.
Mid-State	Farmland Ind.	Kaiser Ag. Chem.
Chemical	Farmers Regional	Occidental
Peavey Company	Harris Serum	Chemical
Terra Chemical	Kay Dee Feed	J. M. Schultz Seed
U.S.S. Agri Chem.	Midwest Ag. Whse.	Seedkem, Inc.
<u>SOUTH DAKOTA</u>	Sur-Gro Plant	Terra Chemical
American	Food	U.S.S. Agri Chem.
Cyanamid	Terra Chemical	Vistron Corp.



IOWA

American  
Cyanamid  
American Oil  
Anderson Feed &  
Seed  
Arco Chemical  
Boyer Valley Fert.  
Brayton Chem.  
Custom Farm  
Services  
Cypress Supply  
F. S. Services

Farmers Regional  
Coop  
Farmland  
Industries  
W. R. Grace  
Kaiser Ag. Chem.  
Kay Dee Feed  
Lavery Sprayers  
Midland  
Cooperatives  
Terra Chem.  
U.S.S. Agri Chem.  
Vistron  
Corporation

WISCONSIN

American Oil  
E-Z Flow  
Felco/Land  
O'Lakes  
F.S. Services  
FUCE  
W. R. Grace  
Cole Chemical  
Midland Coop.  
Terra Chemicals  
U.S.S. Agri-  
Chemicals

**DEFENDANT'S EXHIBIT 272**

**MONSANTO COMPANY**  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63166  
(314) OXford 4-1000

November 11, 1968

Mr. Fred H. Bailey  
Associated Producers, Incorporated  
29 East Indiana Avenue  
St. Paul, Minnesota 55107

Dear Fred:

I have just received comments from our group in St. Louis who read with great interest your October 1, 1968, communique, "Today in Agribusiness," a copy of which was forwarded to me by one of our field men. In summary, Fred, your remarks concerning our positive marketing changes were most gratifying; however, we were disturbed by the implications of some of the statements made in the communique. I was asked to write to you and correct immediately any misconceptions about Monsanto's marketing policies.

More positively stated, it is Monsanto's goal to make the best return possible on the sale of all of its products while providing a fair return to distributors and dealers performing important functions in distributing Monsanto products to the largest possible number of farmer-customers.

With this in mind, Monsanto establishes a distributor price for Monsanto sales to distributors and a dealer price for Monsanto sales to dealers for each product. We also suggest a dealer price for distributors as an aid to them in determining a fair return in a competitive market. This *suggested* price is nothing more than that. Once a distributor buys a Monsanto product, he may sell it at whatever price he sets and on whatever terms and conditions he deems proper for him. The same holds true in the case of dealers buying directly from Monsanto, where Monsanto suggests a retail price. Monsanto *has not* and *will not* enter into *any* agreement—express or implied—with distributors, dealers or anyone else concerning the resale price of its products.

(Continued)

Mr. Fred H. Bailey  
Associated Producers, Inc.  
St. Paul, Minnesota 55107

PAGE 2

November 11, 1968

In similar regard, Monsanto *alone* establishes the policies of its retail outlets, and we *have not* and *will not* agree with anyone else concerning the customers to whom and the prices at which those Monsanto outlets will or will not sell.

To sum it up, Fred, Monsanto cannot and does not intend to regulate, influence, demand or force pricing control on any distributor or dealer. I am writing to you to insure that no misunderstanding or misinterpretation of Monsanto's marketing policies is made on the basis of your October 1 newsletter. You may wish to either forward copies of this letter to the dealers who received that communique, or inform them in some other way of our policies.

Once again, Fred, I would like to thank you for your favorable remarks about Monsanto contained in the newsletter and to wish you a highly successful and profitable year in 1969.

Sincerely,

/s/ D. R. FISCHER

D. R. Fischer  
Director, Pesticide Sales

DFR:sbl

cc: James E. Sovocool  
129 West Glencrest Drive  
Mankato, Minnesota 56001

bc: J. W. Gillespie  
R. T. Gravitte  
R. M. Schweikher  
A. F. Davis  
R. E. Blackwelder  
R. P. Lane  
C. W. Detert  
File Assoc. Producers

**DEFENDANT'S EXHIBIT 465**

**SPRAY-RITE SERVICE CORPORATION**

Manufacturers and Distributors

**MAIN OFFICE**

10216 N. Second (Hwy. 51 North)

Rockford, Illinois 61111

Phone 815-633-2357

February 18, 1966

Dear Friends:

Again we approach another growing season and to us a chemical season. We are looking forward to it enthusiastically—there is so much we want to learn that only a growing season can accomplish. Our industry both Agriculture in general and Agriculture chemicals in particular are in constant change. The introduction of new chemicals, plus old chemicals with new techniques, brings constant surprises and requires deep concentration and evaluation. Another growing season is such a challenge to us with so much to accomplish in so little time. The *challenge of Agriculture* in the eyes of each of us, is indeed massive. However, to produce *more-for-less-easier* is a good, prudent guide.

Personally, I foresee great opportunities in Agriculture today and much greater tomorrow. I feel we are on the verge right now of a boom in Agriculture that we have long been awaiting and will continue indefinitely.

I too, approach this new growing season with much enthusiasm—with new ideas and new techniques that look promising, yet need proof from the field—new tools to fight old enemies—I will again be asking many of you, as in the past, to help me in this evaluation of new tools. Because we all know so well that actually "Agriculture is a controversy with weeds and insects".

I hope we can have time to talk with each one of you individually in hopes we can be of help in adapting chemicals or techniques to your particular operation; be it soil type,

equipment availability, shortage of manpower or crop rotational limitations.

We spread ourselves quite thin in a large volume, small-margin operation and the reason we do this is because we are unable to find anyone crazy enough that will work cheap enough and still be highly qualified.

I hope you can find it practical to come in early that we might discuss matters in depth of mutual concern. As the season gets closer, our time gets so limited with our type of operation, that I cannot offer services that I feel are so necessary in this technical, exacting business of Agricultural Chemicals. We feel we can be of much value to you this year and for the future.

Please give us a call.

Sincerely,

/s/ DON YAPP

Don Yapp  
Spray-Rite Service Corporation

DY:h

P.S.: There are many chemicals in critical short supply this year. Another reason to come early.

**DEFENDANT'S EXHIBIT 466**

1970-1973 SUMMARY OF HERBICIDE SALES  
 REPORTED TO MONSANTO (DX287 AND DX288)  
 BY ALLEGED "CO-CONSPIRATOR" DISTRIBUTORS  
 NAMED  
 IN PARA. 5 OF AMENDED COMPLAINT  
 (GRANULAR EQUIVALENT)

**Associated Producers, Inc.**  
**(Fred Bailey)**  
**St. Paul, Minnesota**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>
Retailers Sold .....	139	93	[Not renewed]
Total Pounds Sold.....	4,998,488	4,885,788	
% Sold to Non-Retailers ...	34.4%	61.9%	
% Sold Outside Primary Area.....	7.7%	—	
No. of States in Primary Area.....	3	-	1
No. of States Sold Outside Primary Area .....	3		1

\* Incomplete information for 1970; sales information requested by first cumulative truckloads sale only.

**Brayton Chemicals, Inc.**  
**(Bert Brayton)**  
**Burlington, Iowa**  
**(Current Distributor)**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Retailers Sold . . . .	442	526	615	760
Total Pounds Sold	8,351,605	11,712,578	14,604,994	25,920,488
% Sold to Non-Retailers . . . . .	43.3%	26.3%	26.8%	5.1%
% Sold to Outside Primary Area . .	—	2.6%	20.6%	2.3%
No. of States in Primary Area . .	4	4	3	3
No. of States Sold Outside Primary Area . . . . .	—	6	4	2

\* Incomplete information for 1970; sales information requested by first cumulative truckload only.

**Cole-Hopkins Agricultural Chemicals**  
**(James Hopkins)**  
**Madison, Wisconsin**  
**(Current Distributor)**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Retailers Sold . . . .	371	428	367	282
Total Pounds Sold	4,327,008	5,525,773	5,351,785	6,813,619
% Sold to Non-Retailers . . . . .	21%	15.1%	2.3%	4.1%
% Sold Outside Primary Area . .	1.4%	2.3%	3.5%	5.2%
No. of States in Primary Area . .	2	2	2	2
No. of States Sold Outside Primary Area . . . . .	2	4	3	4

\* Incomplete information for 1970; sales information requested by first cumulative truckload only.



**Lavery Sprayers, Inc.**  
**(Leo Sterk)**  
**Indianola, Iowa**  
**(Current Distributor)**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Retailers Sold . . . .	46	67	82	87
Total Pounds Sold	1,633,697	4,486,255	5,049,639	5,202,831
% Sold to Non-Retailers . . . . .	28.5%	54.7%	55.4%	37.4%
% Sold Outside Primary Area ..	6.8%	33.1%	44.1%	10.5%
No. of States in Primary Area ..	3	3	3	3
No. of States Sold Outside Primary Area . . . . .	1	2	1	1

\* Incomplete information for 1970; sales information requested by first cumulative truckload only.

**Midstate Chemical Company  
(John Mulvehill)  
Bird Island, Minnesota**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Retailers Sold ....	59	66	85	54
Total Pounds Sold	8,666,418	7,928,071	16,418,814	4,455,390**
% Sold to Non-Retailers.....	62.6%	47.8%	60.5%	12.1%
% Sold Outside Primary Area ..	11%	20.8%	48.2%	4.8%
No. of States in Primary Area ..	4	2	2	2
No. of States Sold Outside Primary Area .....	3	1	2	1

\* Incomplete information for 1970; sales information requested by first cumulative truckload only.

\*\* Van Diest Supply Co. appointed Monsanto distributor in 1973.

**Midwest Agricultural Warehouse Co.  
(Philip James)  
Freemont, Nebraska  
(Current Distributor)**

	<u>1970*</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Retailer Sold . . . . .	37	173	245	173
Total Pounds Sold	3,334,313	12,970,216	5,057,276	7,935,535
% Sold to Non-Retailers . . . . .	34.7%	66.9%	14.9%	29.1%
% Sold Outside Primary Area . .	4.7%	—	12.5%	—
No. of States in Primary Area . .	7	6	5	7
No. of States Sold Outside Primary Area . . . . .	2	—	2	—

\* Incomplete information for 1970; sales information requested by first cumulative truckload only.

(Formerly Anderson Feed & Seed Co.)

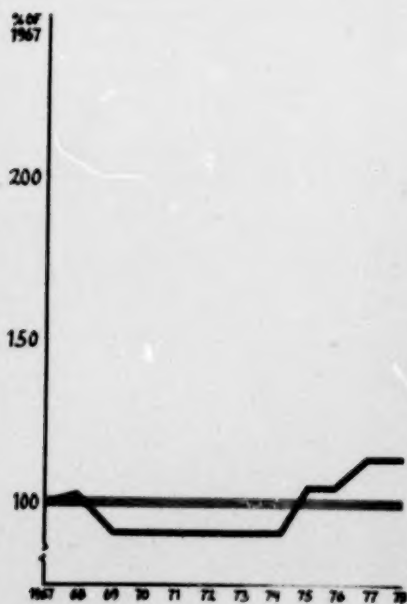
**Van Diest Supply Co.  
(Robert Van Diest)  
Webster City, Iowa  
(Current Distributor)**

	<u>1973</u>	<u>1974</u>
Retailers Sold .....	301	386
Total Pounds Sold .....	18,881,551	33,205,051
% Sold to Non-Retailers .....	18.1%	4.2%
% Sold Outside Primary Area .....	21.7%	27.8%
No. of States in Primary Area .....	2	2
No. of States Sold Outside Primary Area .....	8	12

\* First appointed as a distributor for 1973 season.

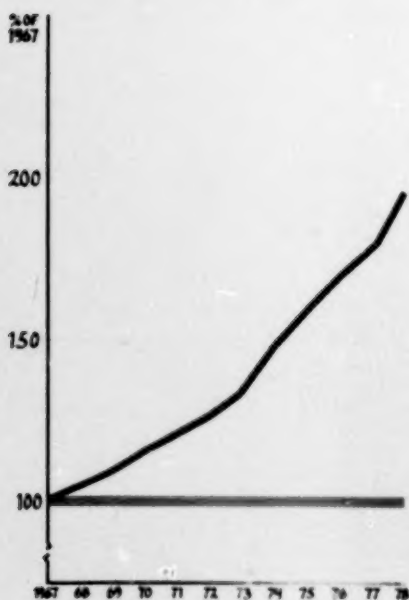
DEFENDANT'S EXHIBIT 467a

MONSANTO HERBICIDE PRICE INDEX, 1967-78



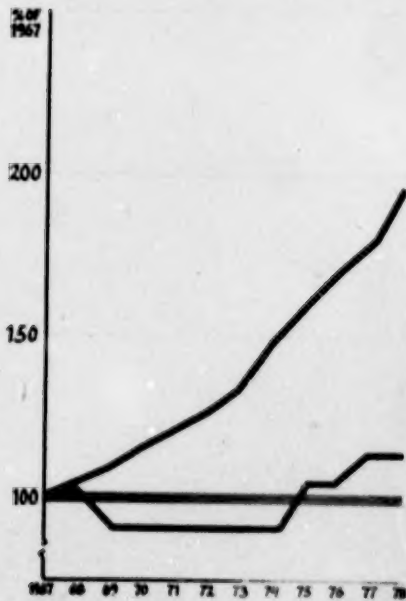
DEFENDANT'S EXHIBIT 467b

CONSUMER PRICE INDEX, U.S., 1967-78



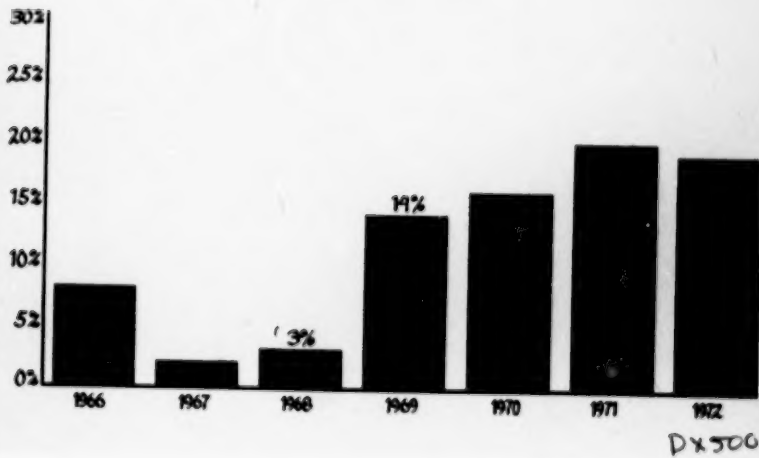
## DEFENDANT'S EXHIBIT 467c

MONSANTO HERBICIDE PRICE INDEX, 1967-78  
CONSUMER PRICE INDEX, U.S., 1967-78



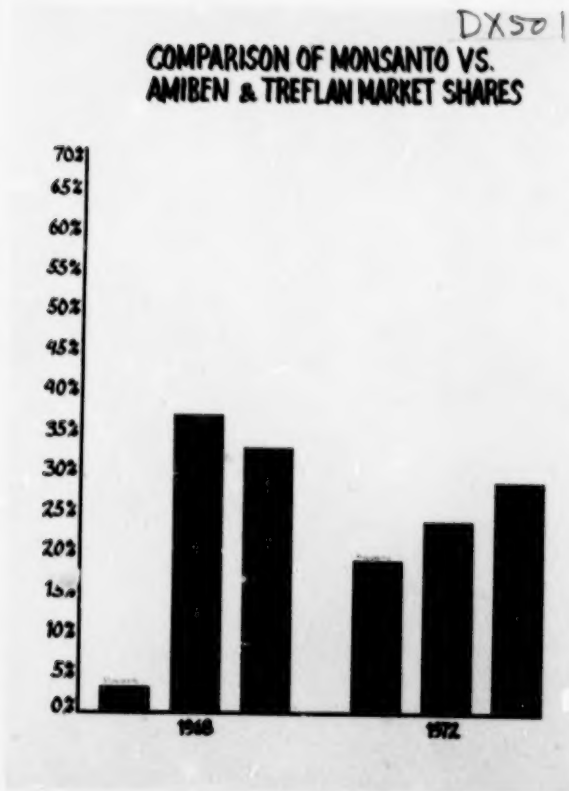
DEFENDANT'S EXHIBIT 500

MONSANTO MARKET SHARE - BEANS





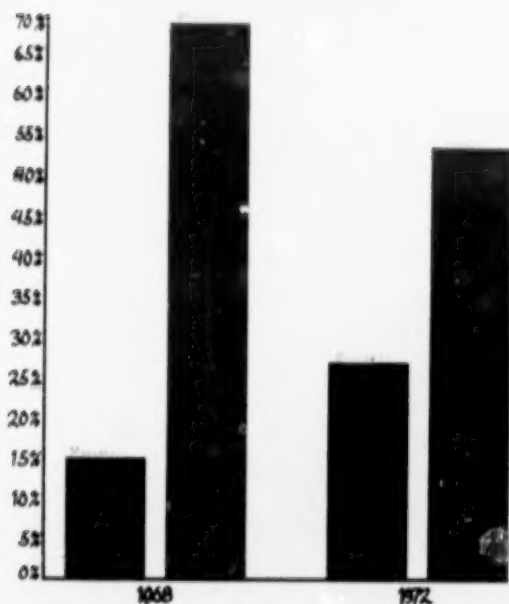
DEFENDANT'S EXHIBIT 501



DEFENDANT'S EXHIBIT 502

DX 502

COMPARISON OF MONSANTO VS.  
ATRAZINE MARKET SHARE-CORN



DEFENDANT'S EXHIBIT 503

MONSANTO MARKET SHARE-CORN

